

SB 203-FN-A – AS AMENDED BY THE SENATE

03/21/12 1214s

2012 SESSION

12-2851

03/09

SENATE BILL 203-FN-A

AN ACT relative to limited liability companies.

SPONSORS: Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Sen. Boutin, Dist 16; Sen. Rausch, Dist 19; Sen. De Blois, Dist 18; Sen. Luther, Dist 12; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4; Rep. Chandler, Carr 1; Rep. Tucker, Rock 17; Rep. Weyler, Rock 8

COMMITTEE: Commerce

ANALYSIS

This bill revises laws governing limited liability companies.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to limited liability companies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Intent.

I. The current version of the New Hampshire limited liability company act was originally enacted in 1993 and was significantly amended in 1997. In recent years, LLCs have become, by a wide margin, the entity of choice both for small New Hampshire businesses and for many larger ones.

II. This bill retains most of the provisions of the current act, but it adds numerous important new features that will make the act significantly more user-friendly for small New Hampshire businesses. At the same time, the revised act fully preserves, and in fact increases, the usefulness of the act for larger businesses.

III. The new features of the revised act include (i) a new overall structure that will make it substantially easier for LLC members and managers and their attorneys to find provisions relevant to their concerns; (ii) new provisions comprehensively defining the fiduciary duties of members and managers; (iii) revisions of numerous provisions of the current act to eliminate possible ambiguities; (iv) maximum use of plain English and the elimination of numerous legalisms in the current the act; and (v) definitions of several key technical terms, such as “allocation,” “distribution,” “dissociation,” and “dissolution” whose meaning is not self-evident but which are not defined in the current act.

IV. This bill also contains a number of new provisions that will increase the flexibility of the act and thus will enhance the ability of both small and large New Hampshire businesses to tailor their LLCs to meet members’ and managers’ needs and interests. These include provisions validating oral and implied operating agreements of LLCs that lack written agreements.

2 Limited Liability Companies. RSA 304-C is repealed and reenacted to read as follows:

CHAPTER 304-C

LIMITED LIABILITY COMPANIES

Short Title; Policy; Effective Date;

Transitional Provisions

304-C:1 Short Title. This act may be cited as the “New Hampshire Revised Limited Liability Company act” (the “act”).

304-C:2 The Policy of this Act. It is the policy of this act to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

304-C:3 Effective Date of this Act. The effective date of this act shall be January 1, 2013.

304-C:4 Replacement of Previous Act. Except as provided in RSA 304-C:5, II this act entirely replaces the New Hampshire limited liability company act as in effect before January 1, 2013.

304-C:5 Transitional Provisions.

I. This act shall govern domestic limited liability companies formed on and after January 1, 2013 and all foreign limited liability companies as of the effective date of this act.

II. Domestic limited liability companies formed on or before December 31, 2012 shall be governed by the New Hampshire limited liability company act until January 1, 2014. On and after January 1, 2014, this act shall govern all limited liability companies. However:

(a) If all of the members of any domestic limited liability company formed on or before December 31, 2012 elect, in writing, to be governed by this act as in effect on January 1, 2013, the domestic limited liability company shall be governed by this act as in effect on the effective date of the election.

(b) Notwithstanding any other provision of this section, a domestic limited liability company formed on or before December 31, 2012 shall be governed by its operating agreement, whether written, oral, or implied, to the extent that this operating agreement overrides any nonmandatory provision of the New Hampshire limited liability company act or of this act.

Definitions

304-C:6 Act. “Act” means the New Hampshire revised limited liability company act.

304-C:7 Certificate of Formation. “Certificate of formation” means the certificate referred to in RSA 304-C:31 as filed with the secretary of state and as amended or restated.

304-C:8 Contribution. “Contribution” means any tangible or intangible property or benefit to the limited liability company, including cash, promissory notes, services performed, or to be performed, that a person contributes to a limited liability company in exchange for the member’s membership rights or otherwise in his or her capacity as a member.

304-C:9 Foreign Limited Liability Company. “Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

304-C:10 Include. “Include” denotes a partial definition.

304-C:11 Limited Liability Company. “Limited liability company” and “domestic limited liability company” mean a limited liability company formed under this act.

304-C:12 Limited Liability Company Interest. “Limited liability company interest” means the right of a member to receive allocations of the profits or losses of a limited liability company and to receive distributions of the limited liability company’s cash and other assets.

304-C:13 Manager. “Manager” means a person who is named or designated as a manager of a limited liability company in an operating agreement.

304-C:14 Member. “Member” means a person who has been admitted to a limited liability company as a member as provided in RSA 304-C:53 or, in the case of a foreign limited liability

company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

304-C:15 Membership Rights. “Membership rights” means the totality of the member’s rights as a member under this act, including both economic rights, such as the member’s limited liability company interest, and non-economic rights, such as the member’s voting rights, if any.

304-C:16 Operating Agreement. “Operating agreement” means any agreement, including any amendments or restatements, whether referred to as a limited liability company agreement, operating agreement, or otherwise, of the member or members as to the internal affairs of a limited liability company or the conduct of its business.

304-C:17 Person. “Person” means a natural person, partnership, limited liability company, foreign limited liability company, trust, business trust, estate, association, joint venture, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

304-C:18 State. “State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States except the state of New Hampshire.

Limited Liability Companies—Basic

Statutory Characteristics

304-C:19 Legal Status of Limited Liability Company as Entity; Duration of Entity Status.

- I. A limited liability company formed under this act shall be a legal entity separate and distinct from its members.
- II. The existence of a limited liability company as a separate legal entity shall continue until cancellation of the limited liability company’s certificate of formation in accordance with RSA 304-C:142.

304-C:20 Number Of Members. A limited liability company must have at least one member but may have any greater number of members.

304-C:21 Permitted Purposes.

- I. A limited liability company may be organized under this act for any lawful purpose except carrying on the business of banking, the construction and maintenance of railroads, the business of making contracts for the payment of money at a fixed date or upon the happening of some contingency, or the business of a trust, surety, indemnity, or safe deposit company.
- II. If, however, the commissioner of the department of transportation enters an order finding that it shall be in the public good and subject to such terms and conditions as he or she may prescribe in the public interest, a limited liability company may be formed under this act to

acquire, maintain, and operate any existing line or railroad or street railway within this state.

304-C:22 Permitted Powers.

I. Unless the operating agreement provides otherwise, every limited liability company shall have the power to do all things necessary or convenient to carry out its activities, business, and internal affairs, including the capacity to sue and be sued in its own name.

II. Except as provided in paragraph III, the validity of an action taken by a limited liability company may not be challenged on the ground that the limited liability company lacks or lacked power to act.

III. A limited liability company's power to act may be challenged:

(a) In a proceeding by a member against the limited liability company to enjoin the act;

(b) In a proceeding by the limited liability company, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former member, manager, officer, employee, or agent of the company; or

(c) In a proceeding by the attorney general under RSA 304-C:135 to dissolve the limited liability company.

IV. In a member proceeding under RSA 304-C:22, III(a) to enjoin an unauthorized act of a limited liability company, the court may enjoin or set aside the act if to do so is equitable and if all affected persons are parties to the proceeding, and the court may award damages for loss, other than anticipated profits, suffered by the limited liability company or another party because of enjoining the unauthorized act.

304-C:23 Liability of Members and Managers to Third Parties.

I. Except as provided in RSA 304-C:144, IV(b) and paragraph II:

(a) The debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and

(b) No member or manager of a limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

II. A member or manager may agree under an operating agreement or other agreement to be personally liable for any or all of the debts, obligations, and liabilities of the limited liability company.

304-C:24 Nature and Transferability of Membership Rights.

I. Membership rights, including limited liability company interests, are intangible personal

property.

II. Unless the operating agreement provides otherwise, membership rights, excluding limited liability company interests, shall be nontransferable except as provided in RSA 304-C:121.

304-C:25 Governing Law. The laws of the state of New Hampshire govern:

I. The internal affairs of a limited liability company; and

II. The liability of a member as member and of a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

304-C:26 Interest of Members in Limited Liability Company Property. A member has no interest in limited liability company property.

Limited Liability Company Formations; Related Matters

304-C:27 Reservation of Name of Limited Liability Company.

I. The exclusive right to the use of a name by a domestic or foreign limited liability company may be reserved by:

(a) Any person intending to organize a limited liability company under this act and to adopt that name;

(b) Any domestic limited liability company or any foreign limited liability company registered in New Hampshire which, in either case, proposes to change its name to that name;

(c) Any foreign limited liability company intending to register in New Hampshire and adopt that name; or

(d) Any person intending to organize a foreign limited liability company and intending to have it register in New Hampshire and adopt that name.

II. The reservation of a specified name shall be made by filing with the secretary of state an application, signed by the applicant, to reserve a specified name.

III. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods.

IV. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the secretary of state a notice of the transfer, signed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee.

V. The reservation of a specified name may be cancelled by filing with the secretary of state a

notice of cancellation, signed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

304-C:28 Requirements For Filing of Documents Under This Act. In addition to any other provisions in this act that govern documents filed with the secretary of state, the following rules shall apply to these documents:

I. A document that satisfies the requirements of this section and of any other statute that adds to or varies these requirements, shall be entitled to filing by the secretary of state.

II. The document shall contain the information required by this act. It may contain other information as well.

III. The document shall be typewritten or printed.

IV. The document shall be in the English language. However, a limited liability company name need not be in English if written in English letters or Arabic or Roman numerals, and the statement of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.

V. Except as otherwise specifically provided in this act, the document shall be signed:

(a) By a manager of a limited liability company that has a manager;

(b) By a member of a limited liability company that does not have a manager;

(c) If the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, by that fiduciary.

VI. The person signing the document shall sign it and state beneath or opposite the person's signature his or her name and the capacity in which the person signs. Signature under RSA 294-E:9 shall be sufficient to satisfy this requirement.

VII. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct fee and any penalty required by this act or other law.

VIII. Documents filed electronically need not be accompanied by an exact or conformed copy, but must be accompanied by the correct filing fee, and any franchise tax, license fee, or penalty required by this act or other law. Annual reports delivered for filing under this act need not be accompanied by an exact or conformed copy.

304-C:29 Effective Time And Date Of Filed Documents.

I. Except as provided in paragraph II, a document accepted for filing by the secretary of state is effective:

(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(b) At the time specified in the document as its effective time on the date it is filed; or

(c) Upon the date and time of acceptance by the secretary of state corporate database and application, if filed electronically.

II. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified.

III. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

304-C:30 Filing and Certification of Certificates.

I. Unless the secretary of state finds that a document does not conform to law, upon receipt of all required filing fees:

(a) The secretary shall certify that the certificate of formation, amendment, or cancellation, any judicial decree of amendment or cancellation, the certificate of merger, or the restated certificate has been filed by endorsing upon the original certificate the word "filed," and the date of the filing, except if filed electronically. This endorsement is conclusive of the date of its filing in the absence of actual fraud.

(b) The secretary shall file the endorsed certificate.

(c) Except if filed electronically, the secretary shall prepare and return to the person who filed it, or such person's representative, a copy of the original signed instrument, similarly endorsed.

II. Upon the filing of a certificate of amendment, or judicial decree of amendment, or restated certificate with the secretary of state, or upon the future effective date or time of a certificate of amendment, or judicial decree of amendment, or restated certificate, the certificate of formation shall be deemed to have been amended or restated as set forth.

III. Upon the filing of a certificate of cancellation, or a judicial decree of cancellation, or a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation or a judicial decree of cancellation, or of a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, the certificate of formation is cancelled.

304-C:31 Certificate of Formation—General Requirements.

I. In order to form a domestic limited liability company, one or more authorized persons shall deliver a certificate of formation to the secretary of state for filing.

II.(a) The certificate of formation shall set forth the name of the limited liability company.

(b) The certificate of formation shall set forth the address of the registered office and the name

and address of the registered agent for service of process required to be maintained by RSA 304-C:36.

(c) The certificate of formation shall set forth the nature of the primary business or the purpose of the limited liability company. However, if, after its formation, a limited liability company engages in any other purpose permitted by law, by this act, and by its operating agreement, the limited liability company's actions in pursuing that other purpose shall not be deemed invalid merely because the other purpose was not set forth in the certificate of formation.

(d) The certificate of formation shall state whether the limited liability company is to be managed by its members or by persons, who may also be members, appointed as its managers under its operating agreement.

(e) The certificate of formation may set forth any other matters the members or managers decide to include.

III. Unless an effective time and date are specified in accordance with RSA 304-C:29, II, a domestic limited liability company is formed on the date and at the time of the filing of the certificate of formation with the secretary of state.

304-C:32 Name Set Forth in Certificate of Formation.

I. The name of each limited liability company as set forth in its certificate of formation:

(a) Shall contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C." or "LLC" or "L.C." or "LC" or any other similar abbreviation; and

(b) May contain the name of a member or manager.

II. A limited liability company name shall not contain language stating or implying that it is organized for a purpose other than that permitted by RSA 304-C:21 and by its certificate of formation.

III. Except as authorized by paragraph IV, V, or VI, a limited liability company name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, this act, RSA 305-A, or RSA 349;

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or this act;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The name of an agency or instrumentality of the United States or this state or a

subdivision of this state;

(e) The name of any political party recognized under RSA 652:11, unless written vote is obtained from the authorized representative of the political organization; or

(f) The name “farmers’ market” unless the entity meets the definition of “farmers’ market” established in RSA 21:34-a, V.

IV. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or is likely to be confused with or mistaken for one or more of the names described in paragraph III as determined from review of the records of the secretary of state.

V. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph III gives written vote to use the name that is not distinguishable from, or likely to be confused with or mistaken for the name of the applying limited liability company; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying limited liability company; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

VI. A limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user limited liability company:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

VII. This act does not control the use of fictitious names.

VIII. Nothing in this act is intended to prohibit the owner or owners of a trade name registered under RSA 349 from forming a domestic limited liability company under the same name as that trade name.

304-C:33 Certificates of Formation as Notice. The fact that a certificate of formation is on file with the secretary of state is notice that the entity formed in connection with the filing of the

certificate of formation is a limited liability company legally formed under the laws of New Hampshire and is notice of all other facts set forth in the certificate which are required to be set forth by RSA 304-C:32, II.

304-C:34 Amendments to Certificates of Formation.

I. A certificate of formation is amended by filing a certificate of amendment with the secretary of state. The certificate of amendment shall set forth:

- (a) The name of the limited liability company; and
- (b) The amendment to the certificate of formation.

II. A certificate of formation may be amended at any time in any respect so long as the certificate of formation as amended contains only provisions that lawfully may be contained in the certificate of formation at the time of making the amendment.

304-C:35 Restated Certificates of Formation.

I. A certificate of formation may be restated at any time by filing a restated certificate of formation with the secretary of state. The restated certificate of formation may contain one or more amendments of the certificate of formation as permitted in a certificate of amendment under RSA 304-C:34.

II. The restated certificate of formation shall state the name of the limited liability company and the text of the restated certificate of formation together with a statement whether the restatement contains new amendments of the certificate of formation.

III. Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided in the certificate, the initial certificate of formation, as amended or supplemented, shall be superseded.

IV. The restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

304-C:36 Limited Liability Company Registered Offices and Registered Agents.

I. Each limited liability company shall have and maintain in the state of New Hampshire:

- (a) A registered office that may be the same as any of its places of business; and
- (b) A registered agent, which agent may be:
 - (1) An individual who resides in this state and whose residential or business office is identical with the registered office; or
 - (2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose

business office is identical with the registered office; or

(3) A limited liability company formed or authorized under this act or a professional limited liability company formed or authorized under RSA 304-D whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

II. A limited liability company may change its registered office or registered agent, or both, by filing with the secretary of state a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;

(d) The name and address of its current registered agent;

(e) If its registered agent is to be changed, the name and address of its successor registered agent; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

III. A registered agent of a limited liability company may resign as registered agent by signing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its principal office.

IV. The appointment of the registered agent shall terminate 31 days after filing of the notice of resignation with the secretary of state or on the appointment of a successor registered agent, whichever occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

V. If a registered agent changes its address to another place in this state, it may change the address of the registered office of any limited liability company for which it is a registered agent by filing a statement with the secretary of state as required by paragraph II, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

304-C:37 Service of Process on Domestic Limited Liability Companies.

I. A limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

II. If a limited liability company has no registered agent or if the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this paragraph at the earliest of:

- (a) The date on which the limited liability company receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the limited liability company; or
- (c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

III. This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

304-C:38 Service of Process on Limited Liability Company Managers and Liquidating Trustees.

I. A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in RSA 304-C:37 in all civil actions or proceedings brought in New Hampshire involving or relating to (i) the business of the limited liability company; (ii) a violation by the manager or the liquidating trustee of a duty to the limited liability company; or (iii) any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced.

II.(a) A manager's or a liquidating trustee's serving as such constitutes the person's consent to the appointment of the registered agent of the limited liability company, or, if there is none, of the secretary of state, as the person's agent upon whom service of process may be made as provided in this section.

(b) Service as a manager or a liquidating trustee shall signify the consent of the manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon the manager or liquidating trustee within New Hampshire, and the appointment of the registered agent, or, if there is none of the secretary of state, shall be irrevocable.

III. Service of process under this section may be effected in the manner provided in RSA 304-C:37.

IV. In a written operating agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, New Hampshire, and to be served with legal process in the same manner prescribed in the operating agreement or other writing.

V. This section does not prescribe the only means, or necessarily the required means, of serving managers and liquidating trustees of limited liability companies.

304-C:39 Signing, Amendment, and Cancellation of Certificates by Judicial Order.

- I. If a person required to sign a certificate required by this act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the signing of the certificate.
- II. If the superior court finds that the signing of the certificate is proper and that any person so designated has failed or refused to sign the certificate, it shall order the secretary of state to record an appropriate certificate or enter an order granting other appropriate relief.
- III. If a person required to sign an operating agreement or an amendment of the agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the signing of the operating agreement or amendment.
- IV. If the court finds that the operating agreement or amendment of the agreement should be signed and that any person required to sign the operating agreement or amendment of the agreement has failed or refused to do so, it shall order the person to sign the agreement or amendment or it shall enter an order granting other appropriate relief.

Operating Agreements

304-C:40 Form Of Operating Agreement. An operating agreement may be written, oral, or implied by course of dealing or otherwise.

304-C:41 Binding Effect of Operating Agreements.

- I. A person that becomes a member or manager of a limited liability company is deemed to assent to the operating agreement.
- II. Subject to RSA 304-C:125, a transferee of a limited liability company interest is bound by the operating agreement whether or not the transferee signs the operating agreement.

304-C:42 No Requirement That Limited Liability Company Sign Agreement. A limited liability company is not required to sign its operating agreement in order to be bound by it or to enforce it.

304-C:43 Single-Member Limited Liability Companies May Have Enforceable Operating Agreements. An operating agreement of a single-member LLC shall not be unenforceable on the ground that there is only one person who is a party to the operating agreement.

304-C:44 Statute Of Frauds Inapplicable To Limited Liability Company Agreements. An operating agreement shall not be subject to any statute of frauds.

304-C:45 Operating Agreements May Provide Rights to any Persons, Including Non-Parties. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in writing.

304-C:46 Admissions of Members Under Limited Liability Company Agreements in Certain Circumstances. A written operating agreement or another written agreement or writing may provide that a person shall be admitted as a member of a limited liability company, or shall become a transferee of a limited liability company interest or other rights or powers of a member to the extent transferred:

- I. If the person, or a representative authorized by the person in writing or by other action, such as payment for a limited liability company interest, signs the operating agreement or any other writing evidencing the intent of the person to become a member or transferee; or
- II. Without a signature, if the person, or a representative authorized by such person orally, in writing, or by other action such as payment for a limited liability company interest, complies with the conditions for becoming a member or a transferee of a limited liability company interest as set forth in the operating agreement or any other writing.

Management of Limited Liability

Companies—General Provisions

304-C:47 Management of Limited Liability Companies.

- I. An operating agreement may provide for the management of a limited liability company in whole or in part by a manager or managers.
- II. Unless the operating agreement provides otherwise, a limited liability company shall be managed by its members.

304-C:48 Method of Appointment of Managers.

- I. Persons may be appointed as managers of a limited liability company as provided in the operating agreement.
- II. Unless the operating agreement provides otherwise, the managers of a limited liability company shall be appointed by majority vote of the members.

304-C:49 Offices and Responsibilities of Managers.

- I. The operating agreement may set forth the offices to be held by a manager and the manager's responsibilities.
- II. Unless the operating agreement provides otherwise, the manager or managers shall have general responsibility for managing the limited liability company.

304-C:50 Termination of Status as Manager.

- I. An operating agreement may provide for the termination of a manager's status as manager.
- II. Unless the operating agreement provides otherwise, a manager's status as manager may be

terminated by majority vote of the members at any time for any reason or for no reason.

304-C:51 Managers Who Are Also Members. Unless the operating agreement provides otherwise, a person who is both a manager and a member:

- I. Has the rights and powers and is subject to the duties of a manager; and
- II. Has the rights and powers and is subject to the duties of a member.

304-C:52 Agency Power of Members and Managers, Etc.

- I. Except as provided in paragraph III, every member is an agent of the limited liability company for the purpose of its business and internal affairs.
- II. The act of any member who is an agent of a limited liability company under paragraph I, including the signing of any legal document in the name of the limited liability company, shall bind the limited liability company unless:
 - (a) The member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and
 - (b) The person with whom the member is dealing has knowledge of the fact that the member has no such authority.
- III. If the operating agreement provides that a limited liability company shall be managed by a manager or managers:
 - (a) Unless the operating agreement provides otherwise, no member, solely by reason of being a member, is an agent of the limited liability company; and
 - (b) Unless the operating agreement provides otherwise, every manager is an agent of the limited liability company for the purpose of its business and internal affairs.
- IV. The act of any manager, including the signing in the name of the limited liability company of any legal document, shall bind the limited liability company unless:
 - (a) The manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and
 - (b) The person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

Members—Admissions, Classes, Information Rights, Etc.

304-C:53 Admissions of Members.

- I. In connection with the formation of a limited liability company, a person otherwise qualified to be a member shall be deemed to be a member:

- (a) On the date provided in the operating agreement; or
- (b) If the operating agreement does not so provide, on the date of formation of the limited liability company.

II. After the formation of a limited liability company, a person otherwise qualified to be a member shall be deemed to be a member:

- (a) On the date provided in the operating agreement; or
- (b) If the operating agreement does not so provide, on the date on which the person makes a required contribution to the limited liability company; or
- (c) If no such contribution is required, on the date on which the person and the member or members of the limited liability company agree that the person shall become a member.

III. A person may be admitted to a limited liability company as a member of the limited liability company and may receive membership rights, including a limited liability company interest, without making a contribution or being obligated to make a contribution to the limited liability company.

304-C:54 Classes of Members, Etc.

I. An operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the operating agreement may provide.

II. An operating agreement may make provision for the future creation, in the manner provided in the operating agreement, of additional classes or groups of members having such relative rights, powers, and duties as may be established from time to time under the operating agreement, including rights, powers, and duties senior to existing classes and groups of members.

304-C:55 Members' and Managers' Rights to Limited Liability Company Information, etc.

I. For any purpose reasonably related to the member's membership, each member of a limited liability company shall have the right, subject to paragraph II, to obtain from the limited liability company from time to time upon reasonable demand:

- (a) Accurate and full information regarding the status of the business and internal affairs of the limited liability company;
- (b) Promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax return for each year for which the limited liability company has filed a return;
- (c) A current list of the name and last known business, residence, or mailing address of each member and manager;

(d) A copy of any written operating agreement and certificate of formation of the limited liability company and all amendments to these documents, together with signed copies of any written powers of attorney under which the operating agreement, any certificate of formation, and any amendment to these documents has been signed;

(e) Accurate and full information regarding (1) the amount of cash and a description and statement of the agreed value of any other property or services which a member has contributed to the limited liability company or which a member has agreed to contribute in the future; and (2) the date on which each became a member; and

(f) Other information regarding the business and internal affairs of the limited liability company that is just and reasonable to provide to the member.

II. Rights provided under paragraph I shall be subject to any reasonable standards that are set forth in an operating agreement or established by the manager or, if there is no manager, by the members. These may include standards governing what information and documents are to be furnished, at what time and location, and at whose expense.

III. Each manager shall have the right to examine all of the information described in paragraph I for any purpose reasonably related to the position of manager.

IV. The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable:

- (a) Information which the manager reasonably believes to be in the nature of trade secrets;
- (b) Other information if the manager believes in good faith that the disclosure (1) is not in the best interest of the limited liability company or (2) could damage the limited liability company or its business; and
- (c) Information which the limited liability company is required by law or by agreement with a third party to keep confidential.

V. A limited liability company may maintain its records in digital form if they are capable of conversion into written form within a reasonable time.

VI. Any demand by a member under this section shall be in writing and shall state the purpose of the demand.

304-C:56 Actions in the Superior Court to Enforce Rights Under RSA 304-C:55.

I. Unless the operating agreement provides otherwise:

- (a) Any action to enforce any right arising under this section shall be brought in the superior court.
- (b) If (1) the limited liability company refuses a demand by a member to obtain information under RSA 304-C:55, I or by a manager to examine information described under that section

or (2) the limited liability company does not reply to the demand within 5 business days after receiving it, or any shorter or longer period of time that is provided for in an operating agreement, but not longer than 30 business days, the demanding member or manager may apply to the superior court for an order to compel the disclosure of the information.

(c) The superior court is hereby vested with exclusive jurisdiction to determine whether or not a person seeking information under RSA 304-C:55 is entitled to the information.

(d) The superior court may summarily order the limited liability company to permit the demanding member to obtain or the demanding manager to examine the information described in RSA 304-C:55, I and to make copies or abstracts of documents containing this information.

(e) The superior court may summarily order the limited liability company to furnish to the demanding member or manager the information described in RSA 304-C:55, I on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing the information and on such other conditions as the superior court deems appropriate.

(f) When a demanding member seeks to obtain or a manager seeks to examine the information described in RSA 304-C:55, I the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information; and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or to the manager's position as a manager.

(g) The superior court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information and may award any other relief which the superior court deems just and proper.

(h) The superior court may order books, documents, and records, pertinent extracts of them or duly authenticated copies of them to be brought into this state and to be kept in this state upon such terms and conditions as the order may prescribe.

II. The provisions of RSA 304-C:55, II shall not be construed to limit the ability of any court to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this act.

304-C:57 Certificates of Membership Rights, etc. An operating agreement may provide that the limited liability company may issue certificates evidencing:

I. Membership rights, including limited liability company interests; and

II. Other rights relating to a limited liability company, including a limited liability company interest that has been transferred in accordance with the provisions of the operating agreement or this act.

304-C:58 Rights and Duties of Members. Unless the operating agreement provides otherwise,

a member of a limited liability company shall have the rights and duties of members as provided in this act.

304-C:59 Resolution of Disputes About the Status of Persons as Members. Any dispute as to whether a person was or is or will be entitled to become a member of a limited liability company and as to when the person was admitted or will be entitled to be admitted as a member shall be resolved in a proceeding in the superior court.

Member Meetings

304-C:60 Meetings of Members; Written Votes.

- I. Unless the operating agreement provides otherwise, meetings of members may be held by means of telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting under this paragraph shall constitute presence in person at the meeting.
- II. Unless the operating agreement provides otherwise, on any matter that is to be voted on by members, the members may cast their votes in a writing without a meeting and without prior notice if the votes taken without a meeting are not less than the minimum number of votes that would be necessary to decide the matter at a meeting at which all members entitled to vote on the matter were present and voted.
- III. Unless the operating agreement provides otherwise, on any matter that is to be voted on by members, the members may vote in person or by proxy. Any such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.
- IV. Unless the operating agreement provides otherwise, a vote transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this section.
- V. For purposes of paragraph IV, the term “electronic transmission” means any form of communication:
 - (a) Which does not directly involve the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the paper; and
 - (b) Which may be directly reproduced in paper form by a recipient through an automated process.
- VI. Unless the operating agreement provides otherwise, a quorum for a meeting of members shall be the number of members holding one more than one-half of the votes held by all of the members.

304-C:61 Notices for Member Meetings and Voting Procedures. An operating agreement that grants the members a right to vote may set forth provisions relating to (i) notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, (ii) waiver of any such notice, (iii) action by vote without a meeting, (iv) the establishment of a

record date, (v) quorum requirements, (vi) voting in person or by proxy, or (vii) any other matter with respect to the exercise of any such right to vote.

304-C:62 General Meetings Upon Demand by Members.

I. Unless the operating agreement provides otherwise, and subject to paragraph II, there shall be, within 30 days after a written demand by any member, a meeting of the members to consider the business and internal affairs of the limited liability company and to take any action permitted to be taken by the members by law, or under the operating agreement.

II. No meeting shall be required under paragraph I if there has been such a meeting within 240 days before delivery of the demand under that section.

III. In addition to any other business that may come before a meeting under paragraph I:

(a) The persons having management of the limited liability company shall report on the business and internal affairs of the company during the meeting; and

(b) They shall either make available in writing at the meeting the information listed in RSA 304-C:55, I(a)-(e) or be prepared to respond promptly in writing to demands for information under RSA 304-C:55.

304-C:63 Special Meetings Upon Demand by Members. Unless the operating agreement provides otherwise:

I. A special meeting of the members may be convened by a manager or by 2 or more members for any purpose or purposes that are set forth in a written notice of the meeting.

II. The person or persons calling the meeting shall provide a notice of it to the members at least 10 days before the date of the meeting. The notice shall set forth the date, time, and place of the meeting and its purpose or purposes.

Member Votes

304-C:64 Vote, Majority Vote, Etc. — Definitions.

I. For purposes of this subdivision, the term “vote” shall mean any expression of approval, consent, or dissent, whether by voice, by show of hand, in writing, or otherwise.

II. Unless an operating agreement provides otherwise, a majority vote of the members means an affirmative vote by members holding a majority of member votes. The number of member votes held by each member shall be determined under RSA 304-C:65, II.

III. A majority vote of the other members means an affirmative vote of members holding a majority of member votes exclusive of those held by a specified member.

IV. With respect to any limited liability company matter, a disinterested member means a member with no material financial or other interest in the matter except in the member’s

capacity as a member.

304-C:65 Members' Voting Power.

I. Voting by members may be on a per capita, number, profits, financial interest, class, group, or any other basis.

II. Unless the operating agreement provides otherwise, the number of votes that each member shall be entitled to cast on each matter on which the members may vote shall be proportionate to the member's share of contributions of cash, property, and services to the limited liability company in connection with its formation.

304-C:66 Matters That the Members May Decide by Vote.

I. Unless the operating agreement provides otherwise, the members of member-managed multi-member limited liability companies may decide by vote all matters related to the limited liability company.

II. Unless the operating agreement provides otherwise, the following types of matters shall require the affirmative vote of the members of manager-managed limited liability companies:

(a) Whether to compromise a member's promise to make a contribution to the limited liability company;

(b) Whether the limited liability company shall indemnify a member or other person;

(c) Whether the limited liability company shall admit a new member;

(d) Whether a member may transfer or pledge all or any part of the member's membership rights, except that, unless the operating agreement provides otherwise, a member may transfer all or any part of the member's limited liability company interest without a vote by the other members;

(e) Whether the limited liability company interest may grant additional membership rights to a member;

(f) Whether to remove a manager;

(g) Whom to appoint to replace a manager who has ceased to be a manager;

(h) Whether and on what terms the limited liability company may sell all or substantially all of its assets outside the ordinary course of business;

(i) Whether and on what terms the limited liability company may change its business organization form under RSA 304-C:149;

(j) Whether and on what terms the limited liability company may participate in a merger;

- (k) Whether and on what terms the limited liability company may be dissolved; and
- (l) Whether a member may take an action that breaches the member's duty of loyalty or any duty subsidiary to that duty.

III. Unless the operating agreement provides otherwise, all matters not reserved for decision by the members under paragraph II and RSA 304-C:70 shall be reserved for decision by the managers.

304-C:67 Voting Requirements.

I. Unless RSA 304-C:67, II, RSA 304-C:68, RSA 304-C:69, RSA 304-C:87, V, or RSA 304-C:11, or the operating agreement provide otherwise, all matters that this act reserves for decision by the members shall be decided by vote of a majority of the members.

II. Unless the operating agreement provides otherwise, the affirmative vote of all members shall be required to:

- (a) Amend a certificate of formation;
- (b) Amend an operating agreement;
- (c) Amend a promise to make a contribution;
- (d) Grant additional membership rights to a member; or
- (e) Admit a new member.

304-C:68 Matters Requiring Unanimous Vote of the Other Members. Unless the operating agreement provides otherwise, matters reserved for decision by vote of members other than a specified member or members shall be decided by unanimous vote of the other members in accordance with RSA 304-C:100, II, RSA 304-C:100, III, RSA 304-C:121, RSA 304-C:122, I, and RSA 304-C:124.

304-C:69 Matters Requiring Majority Vote of the Disinterested Members. Unless the operating agreement provides otherwise, matters reserved for decision by vote of the disinterested members shall be decided by majority vote of the disinterested members in accordance with RSA 304-C:117, II.

304-C:70 Permissibility of Actions Not Requiring Member Votes. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create a class or group of limited liability company interests under the provisions of the operating agreement that was not previously outstanding.

304-C:71 Right of Members to Vote Separately. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter.

Managers—General Provisions

304-C:72 Appointment of Managers. A person shall be named or designated as a manager of the limited liability company as provided in RSA 304-C:48.

304-C:73 Contributions by Managers. A manager of a limited liability company who is a member may make contributions to the limited liability company as a member and may share as a member in the profits and losses of the limited liability company and in distributions from it.

304-C:74 Offices and Responsibilities of Managers. Unless the operating agreement provides otherwise, the managers shall have general responsibility for the management of the limited liability company.

304-C:75 Duration of Managers' Terms. Unless the operating agreement provides otherwise, the duration of a manager's term shall be indefinite and shall terminate only upon the manager's death, resignation, or removal.

304-C:76 Classes of Managers.

I. An operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the operating agreement may provide.

II. An operating agreement may make provision for the future creation, in the manner provided in the operating agreement, of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established under the operating agreement, including rights, powers, and duties senior to existing classes and groups of managers.

III. An operating agreement may identify managers as directors or officers rather than as managers.

304-C:77 Permissibility of Manager Actions Not Requiring Manager Votes. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the operating agreement a class or group of membership rights, including limited liability company interests, that was not previously outstanding.

304-C:78 Managers' Voting Power. Unless the operating agreement provides otherwise, each manager shall have one vote on each matter that the managers may decide by vote.

304-C:79 Managers' Voting Requirement. Unless the operating agreement provides otherwise, each matter that the managers may decide by vote shall be decided by vote of a majority of the managers by number.

304-C:80 Right of Managers to Vote Separately. An operating agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote,

separately or with all or any class or group of managers or members, on any matter.

304-C:81 Notices for Manager Meetings, Etc. An operating agreement that grants to managers a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by vote without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of a right to vote.

304-C:82 Meetings of Managers.

I. Unless the operating agreement provides otherwise, meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting under this paragraph shall constitute presence in person at the meeting.

II. Unless the operating agreement provides otherwise, on any matter that is to be voted on by managers, the managers may take the vote without a meeting and without prior notice if the vote is recorded in a writing setting forth the action so taken and is signed by all of the managers.

III. Unless the operating agreement provides otherwise, a vote transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this section.

IV. For purposes of this section, the term “electronic transmission” shall have the meaning set forth in RSA 304-C:60, V.

304-C:83 Delegations by Managers. Unless the operating agreement provides otherwise:

I. The managers may delegate their rights, powers, and authority to third parties; and

II. The managers may designate these third parties as officers of the limited liability company and may endow them with such duties and authority as the managers deem appropriate.

304-C:84 Manager Resignations. Unless the operating agreement provides otherwise, a manager may resign without liability upon 15 days' written notice to the limited liability company and the members.

Contributions

304-C:85 Permitted Forms of Contributions. The contribution of a member to a limited liability company may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

304-C:86 Valuations of Non-Cash Contributions.

I. Upon the admission of any member whose contribution is or will be in any form other than

money, or who is admitted to membership without contribution, or when a member makes an additional contribution in any form other than money, the persons having management of the limited liability company shall determine and shall state in writing the dollar value of the contribution or that there was no contribution.

II. After a determination under paragraph I, the determination shall, in the absence of fraud, be conclusive as to the value of the contribution or the fact that there was no contribution.

304-C:87 Liability of Members for Promised Contributions.

I. Unless the operating agreement provides otherwise, a promise by a member to contribute to the limited liability company shall not be enforceable unless set forth in a writing signed by the member.

II. Unless the operating agreement provides otherwise, a member shall be obligated to a limited liability company to perform any enforceable promise to contribute cash or property or to perform services even if the member is unable to perform the promise because of death, disability, or any other reason.

III. Unless the operating agreement provides otherwise, if a member does not make a required contribution of property or services, the member shall be obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value of the contribution that has not been made.

IV. Unless the operating agreement provides otherwise, the option provided under paragraph III shall be in addition to, and not instead of, any other rights that the limited liability company may have against the member under the operating agreement or applicable law, including the right to specific performance.

V. Unless the operating agreement provides otherwise, the obligation of a member to make a contribution to the limited liability company or to return to the limited liability company money or other property that the limited liability company has paid or distributed to the member in violation of this act shall be compromised only by the affirmative vote of all the members.

VI. Notwithstanding a compromise of an obligation under paragraph V, a creditor who extends credit to the limited liability company or who otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation but before the compromise may enforce the original obligation.

VII. An operating agreement may provide that a member who fails to make a contribution that the member is obligated to make shall be subject to specified penalties or specified consequences because of the failure.

VIII. Unless the operating agreement provides otherwise, a penalty or consequence under paragraph VII may take the form of reducing or eliminating the member's proportionate membership rights in a limited liability company, subordinating the member's membership rights to that of nondefaulting members, a forced sale of the member's membership rights,

forfeiture of the member's membership rights, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's membership rights by appraisal or by formula and redemption or sale of the member's membership rights at that value, or any other penalty or consequence.

304-C:88 Remedies for Breaches of Operating Agreements by Members, Etc.

I. An operating agreement may provide that a member who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or consequences.

II. An operating agreement may provide that at the time or upon the occurrence of events specified in the operating agreement, a member shall be subject to specified penalties or specified consequences, including those set forth in RSA 304-C:87, VII.

Allocations

304-C:89 Allocations—Definition. Unless the operating agreement provides otherwise, an allocation by the limited liability company to its members of its profits and losses shall mean an apportionment to the members of their respective shares of these profits and losses on the books of the limited liability company.

304-C:90 Formula for Allocations of Profits and Losses.

I. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the operating agreement.

II. Unless the operating agreement provides otherwise, profits and losses shall be allocated on the basis of the agreed value, as of the date of contribution, of the contributions made by each member to the extent that the limited liability company has received these contributions.

Distributions

304-C:91 Distribution, Etc. —Definitions. Unless the operating agreement provides otherwise, the following terms shall have the following meanings:

I. Distribution. A distribution by the limited liability company to a member shall mean any transfer of its cash or other assets to the member except:

- (a) Payments to a member relating to a transaction between the limited liability company and a member acting in a capacity other than as a member;
- (b) Payments to a member made without regard to the limited liability company's profit or loss for services to or for the limited liability company or for the limited liability company's use of the member's capital; and
- (c) Payments to a member under a limited liability company's indemnification obligations as referenced in RSA 304-C:116 or a limited liability company's obligation to advance expenses as

referenced in RSA 304-C:117.

II. Interim Distribution. An interim distribution to a member shall mean any distribution except a liquidating distribution, as defined in paragraph III.

III. Liquidating Distribution. A liquidating distribution shall mean a distribution in connection with:

(a) The limited liability company's partial or complete redemption of a member's membership rights; or

(b) The limited liability company's dissolution and liquidation.

304-C:92 Members as Creditors With Respect to Certain Distributions. Subject to RSA 304-C:93 and RSA 304-C:141, and unless the operating agreement provides otherwise, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution.

304-C:93 Limitations on Distributions

I. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the assets of the limited liability company.

II. The fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair market value of that property exceeds that liability.

III.(a) A member who receives a distribution in violation of paragraph I, and who knew at the time of the distribution that it violated paragraph I, shall be liable to a limited liability company for the amount of the distribution, but only to the extent that the distribution exceeded the amount that could have been properly paid under paragraph I.

(b) A member who receives a distribution in violation of paragraph I, and who did not know at the time of the distribution that the distribution violated paragraph I shall not be liable for any amount of the distribution.

304-C:94 Interim Distributions.

I. Unless the operating agreement provides otherwise, a member-managed multi-member limited liability company shall make interim distributions at such times and in such aggregate amounts as determined by majority vote of the members from time to time.

II. Unless the operating agreement provides otherwise, a manager-managed multi-member

limited liability company shall make interim distributions at such times and in such aggregate amounts as determined by majority vote of the managers from time to time.

304-C:95 Allocations of Distributions.

I. Distributions by a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the operating agreement.

II. Unless the operating agreement provides otherwise, distributions shall be made on the basis of the agreed value, as of the date of contribution, of the contributions made by each member to the extent the limited liability company has received these contributions.

304-C:96 Form of Distributions.

I. Unless the operating agreement provides otherwise, and in any case subject to the limitations provided in paragraph II, a member that has a right to a distribution, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any particular form, including a cash or in kind distribution.

II. Unless the operating agreement provides otherwise, a limited liability company shall not require a member to accept a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage in which the member shares in distributions from the limited liability company.

304-C:97 Record Dates for Distributions.

I. An operating agreement may provide for the establishment of a record date with respect to distributions to its members.

II. Unless the operating agreement or a vote of the members or managers provide otherwise, the record date for a distribution shall be the date on which the members or managers declare or vote in favor of the distribution, as the case may be.

Member Dissociations

304-C:98 Dissociation— Definition. Subject to the provisions of RSA 304-C:105 and RSA 304-C:153, the dissociation of a member shall mean the termination of all of the member's membership rights except:

I. The member's limited liability company interest; and

II. The rights identified in RSA 304-C:99.

304-C:99 Certain Effects of Dissociation.

I. If, after dissociation, a former member retains all or any part of the former member's limited liability company interest, the former member shall be entitled to the following rights:

(a) Subject to reasonable restrictions as determined from time to time by the limited liability company, the former member shall be entitled to inspect and copy at the former member's own expense all information reasonably relevant to allocations and distributions to the former member in respect of the former member's limited liability company interest.

(b) Unless the operating agreement provides otherwise, the former member may invoke the dispute resolution provisions of RSA 304-C:186 with respect to the former member's limited liability company interest.

II. Subject to any contrary provision in RSA 304-C:106 through RSA 304-C:117, a member who has been dissociated from a limited liability company shall have no fiduciary or other duties to the limited liability company.

III. A person who has been dissociated from the limited liability company shall have no liabilities to the limited liability company except liabilities that accrued to the member before the member's dissociation and that were not discharged before or concurrent with the member's dissociation.

304-C:100 Statutory Events of Dissociation Applicable to All Members. Unless the operating agreement provides otherwise, an individual who is a member of a limited liability company shall be dissociated upon the occurrence of any of the following events:

I. The member withdraws by voluntary act from the limited liability company as provided for in the operating agreement or RSA 304-C:103.

II. The member is removed as a member as provided for in RSA 304-C:104.

III. The member is removed as a member in accordance with the provisions of the operating agreement.

IV. Unless the other members at the time of occurrence of any of the following events vote unanimously not to treat the event as an event of dissociation, and except in the case of a single member limited liability company, the member:

(a) Makes an assignment for the benefit of creditors;

(b) Files a voluntary petition in bankruptcy;

(c) Is adjudicated a bankrupt or insolvent;

(d) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

(f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of

the member or of all or any substantial part of the member's properties;

(g) If within 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or

(h) If within 120 days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his or her properties, the appointment is not vacated or stayed or if within 120 days after the expiration of any stay, the appointment is not vacated.

V. In the case of a member who is an individual, the member's death, unless within 10 days following the member's death, the other members vote unanimously not to treat death as an event of dissociation.

VI. Except in the case of a single-member limited liability company, the entry of a final order by a court of competent jurisdiction adjudicating that the member lacks capacity to manage the member's person or estate.

304-C:101 Additional Statutory Events of Dissociation Applicable to Members That Are Entities. Unless the operating agreement provides otherwise:

I. A member that is a trust or is acting as a member by virtue of being a trustee of a trust shall be dissociated upon the termination of the trust, but not merely upon the substitution of a new trustee.

II. A member that is a limited liability company that is dissolved by final judicial order under RSA 304-C:134 or under RSA 304-C:135 shall be dissociated on the date of the final judicial order.

III. A member that is a limited liability company that is dissolved under its operating agreement under RSA 304-C:129, II shall be dissociated on the date of dissolution under that agreement or, if the agreement provides no such date, 30 days after the date of the event or circumstance triggering the dissolution.

IV. A member that is a limited liability company that is dissolved by vote of its members under RSA 304-C:129, II shall be dissociated on the date of the vote.

V. A member that is a limited liability company that receives a notice of dissolution from the secretary of state under RSA 304-C:137, I shall be dissociated unless it is reinstated by the secretary of state within 90 days after the date of the notice. Unless the limited liability company is reinstated, the effective date of the dissociation shall be the 90th day after the date of the notice.

VI. A member that is a corporation shall be dissociated if it files articles of dissolution under RSA 293-A:14.01 or under RSA 293-A:14.02 and RSA 293-A:14.03. In either case, the effective date of the dissociation shall be the date on which the corporation files the articles.

VII. A member that is a corporation shall be dissociated if it is dissolved by final order of a court. Unless the corporation is reinstated, the effective date of the dissolution shall be the date of issuance of the order.

VIII. A member that is a corporation shall be dissociated if it receives a notice of dissolution from the secretary of state under RSA 293-A:14.21 and is not reinstated within 90 days after the date of the notice. The effective date of the dissociation shall be the 90th day after the corporation receives the notice.

IX. Other than as provided in RSA 304-C:153, an estate that is a member shall be dissociated upon the distribution by the estate's fiduciary of the estate's entire interest in the limited liability company.

304-C:102 Other Permissible Events of Dissociation. The members may provide in an operating agreement for events, the occurrence of which shall result in a person ceasing to be a member of the limited liability company

304-C:103 Member Withdrawals.

I. Unless the operating agreement provides otherwise, a member may withdraw from a limited liability company at any time by giving 30 days' written notice to the other members, or such other notice as is provided for in writing in the operating agreement.

II. If the member has the power to withdraw but the withdrawal is a breach of the operating agreement, or the withdrawal occurs in connection with otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct, which may include the reasonable costs of obtaining replacement of any services the withdrawn member was obligated to provide to the limited liability company.

III. The limited liability company may offset its damages under paragraph II against the amount otherwise distributable to the withdrawing member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law.

IV. Unless the operating agreement provides otherwise, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of the term or the accomplishment of the purpose is wrongful conduct for which the limited liability company may recover damages under the provisions of paragraph II.

304-C:104 Judicial Removal of Member.

I. An operating agreement may provide for the removal of a member by any method or procedure and for any reason.

II. Unless the operating agreement provides a method or procedure and standard for removal of a member, then, on application by any member to the superior court and after notice to the member sought to be removed under the provisions of paragraph IV:

(a) The court may remove a member by judicial order if (1) the member has breached a duty to the limited liability company; (2) the breach has caused material injury to the limited liability company; and (3) if the breach is capable of being remedied, the member has failed to remedy the breach within a reasonable time after receiving notice of it.

(b) The court may remove a member by judicial order if (1) the member has engaged in any other conduct that has caused material injury to the limited liability company; and (2) if the injury is capable of being remedied, the member has failed to remedy the injury within a reasonable time after receiving notice of the injury.

(c) The court may remove a member by judicial order if it is certain or reasonably likely that (1) the member will breach the member's duty to the limited liability company and the breach is certain or reasonably likely to cause material injury to the limited liability company; or (2) the member will engage in any other conduct that is certain or reasonably likely to cause material injury to the limited liability company.

(d) The court may remove a member by judicial order if the member has engaged, or is engaging, in conduct relating to the limited liability company's activities that make it not reasonably practicable to carry on the activities of the limited liability company with the person as a member.

III. In responding to an application under paragraph II, the court shall have discretion to provide relief to the applicant, the limited liability company, or the member sought to be removed other than the removal of the member sought to be removed, including the discretion to order a redemption or cross-purchase of all or any part of the membership rights of any member or members of the limited liability company on terms determined by the court.

IV. For purposes of this section, timely written notice shall mean a written notice given by the limited liability company or another member to the member sought to be removed. This notice shall state with specificity the duty breached, the member's actions or omissions, or threatened actions or omissions, as the case may be, given within a reasonable time after the limited liability company or other member first became aware, or reasonably should have become aware, of the breach, actions or omissions or threatened actions or omissions that constitute cause for removal of the member.

304-C:105 Distributions Upon Member Dissociation.

I. Unless the operating agreement provides otherwise, any member, upon dissociation under RSA 304-C:100, RSA 304-C:101, or RSA 304-C:102, is entitled to receive any accrued distribution to which the member was entitled at the time of dissociation.

II. Unless the operating agreement provides otherwise, a dissociating member is not entitled to receive any payment for the value of the member's membership rights, including the member's limited liability company interest, as of the date of dissociation.

III. If a dissociated member receives no payment for the value of the member's membership rights, including the member's limited liability company interest, the dissociated member shall continue to have the rights of a transferee of a limited liability company interest under

RSA 304-C:123, subject to the limited liability company's right of offset under RSA 304-C:103, III.

304-C:105-a Right of Legal Representatives of Certain Dissociated Members to Exercise Members' Membership Rights.

I. Unless the operating agreement provides otherwise, and subject to RSA 304-C:153, upon the dissociation of a member under RSA 304-C:100, V because of the member's death, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the membership rights held by the member immediately before the member's death for the purpose of settling the member's estate or administering the member's property.

II. Unless the operating agreement provides otherwise, upon the dissociation of a member under RSA 304-C:100, VI because of a determination that the member is incapacitated, the member's legal representative may, for a period of one year after the date of the determination, exercise all of the membership rights held by the member immediately before the date of the determination.

III. Unless the operating agreement provides otherwise, upon the dissociation of a member that is a corporation, trust, or other entity under RSA 304-C:101 because of the entity's dissolution or termination, all of the membership rights held by the member immediately before the effective date of the dissolution or termination may be exercised by its legal representative or successor for the purposes of winding up its affairs.

Fiduciary Duties And Related Matters

304-C:106 Application to Certain Members of Fiduciary Duties Applicable to Managers. Unless the operating agreement provides otherwise, the duties imposed on managers of limited liability companies under this subdivision shall apply also to:

I. Members of member-managed multi-member limited liability companies; and

II. Non-manager members of manager-managed multi-member limited liability companies to the extent that these non-manager members exercise management functions for these limited liability companies.

304-C:107 Expansion, Restriction and Elimination of Duties. To the extent that, at law or in equity, a member or manager or other person has duties, including fiduciary duties, to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an operating agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the operating agreement; provided, that the operating agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

304-C:108 Duty and Standard of Care.

I. Unless the operating agreement provides otherwise, managers shall have a duty of care to the limited liability company and to the members.

II. Unless the operating agreement provides otherwise, managers shall discharge their management duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

304-C:109 Business Judgment Rule.

I. Unless the operating agreement provides otherwise, there shall be a rebuttable presumption that a manager has not breached the manager's duty of care if, in the matter in question, the manager has acted:

- (a) In accordance with contractual good faith;
- (b) In a manner the manager reasonably believed to be in the best interest of the limited liability company; and
- (c) On the basis of reasonably adequate information.

II. As used in this act, the phrase "contractual good faith" means good faith within the meaning of the implied contractual covenant of good faith and fair dealing as partially defined in RSA 304-C:111, II.

304-C:110 Duty of Loyalty – in General.

I. Unless the operating agreement provides otherwise, managers shall owe a duty of loyalty to the limited liability company and to the members.

II. For purposes of this act, the duty of loyalty of managers shall mean their duty to act in a manner that they reasonably believe to be in the best interest of the limited liability company.

III. Unless the operating agreement provides otherwise, the duty of loyalty of a manager shall include:

- (a) A duty not to compete against the limited liability company;
- (b) A duty not to engage in self-interested transactions with the limited liability company;
- (c) A duty not to usurp business opportunities of the limited liability company;
- (d) A duty to maintain the confidentiality of confidential limited liability company information;
- (e) A duty to disclose to the members with reasonable promptness material information of which the manager becomes aware concerning the limited liability company;
- (f) A duty to use limited liability company property only for the benefit of the limited liability company;
- (g) A duty to avoid improper personal benefits, including excessive compensation for services to or for the limited liability company; and

(h) A duty to act toward the limited liability company with fiduciary good faith.

IV. Fiduciary good faith includes the avoidance of conduct that the manager knows will inflict injury:

(a) On the limited liability company; or

(b) On its members in their capacity as members.

V. However, unless the operating agreement provides otherwise, a member or manager shall not be subject to a duty set forth in this section if:

(a) The member or manager discloses the material facts concerning an action which the member or manager wants to take that may breach the duty; and

(b) Before the member or manager takes the action, it is approved by majority vote of the disinterested members.

304-C:111 Implied Contractual Covenant of Good Faith and Fair Dealing.

I. Managers shall comply with the implied contractual covenant of good faith and fair dealing.

II. The implied contractual covenant of good faith and fair dealing shall include a duty to use reasonable efforts to meet the reasonable expectations of the limited liability company and of the members on matters within the scope of the operating agreement but not specifically addressed in it.

304-C:112 Defense of Reliance on Records of Limited Liability Company. In any matter relating to the limited liability company, a member or manager of a limited liability company shall be fully protected from liability to the limited liability company and to the members if the member or manager relies, in a manner consistent with contractual good faith, on the records of the limited liability company.

304-C:113 Defense of Reliance on Certain Limited Liability Company Information and Opinions, Etc.

I. In any matter relating to the limited liability company, a manager of a limited liability company shall be fully protected from personal liability in relying, in accordance with contractual good faith, upon information, opinions, reports or statements presented to the limited liability company:

(a) By any of its other managers, members, officers, employees, or committees of the limited liability company; or

(b) By any other person if the manager reasonably believes the matters in question are within the other person's professional or expert competence.

II. The information covered by paragraph I shall include information, opinions, reports, or

statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company and as to any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

304-C:114 Remedies for Breaches of Operating Agreements by Managers.

I. An operating agreement may provide that a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

II. An operating agreement may provide that at the time or upon the occurrence of events specified in the operating agreement, a manager shall be subject to specified penalties or consequences.

304-C:115 Exculpations – in General. An operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary duties, of a member, manager, or other person to a limited liability company or to another member or manager, or to another person that is a party to or is otherwise bound by an operating agreement; provided, that an operating agreement may not limit or eliminate liability for any act or omission that constitutes a violation of the implied contractual covenant of good faith and fair dealing.

304-C:116 Indemnification.

I. Except as provided in paragraph II, and subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify any member or manager or other person made a party to a proceeding or threatened to be made a named defendant or respondent in a proceeding because the member, manager, or other person acted on behalf of the limited liability company, against liability for a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding, if:

- (a) The member, manager, or person conducted himself or herself in accordance with contractual good faith; and
- (b) The member, manager, or person reasonably believed his or her conduct was not opposed to the best interest of the limited liability company.

II. A limited liability company may not indemnify a member, manager, or other person under paragraph I:

- (a) In connection with a proceeding by or in the right of the limited liability company in which the person was judged liable to the limited liability company; or
- (b) In connection with any other proceeding charging the person with a breach of the duty of loyalty, whether or not involving action on behalf of the limited liability company, in which the person was adjudged liable for the breach.

304-C:117 Advancement of Legal Costs, Etc. Subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may advance to members, managers, and other persons their costs, including legal fees, in defending themselves against claims arising from their relationship to the limited liability company:

- I. If the operating agreement so provides; or
- II. If a majority of the disinterested members so vote.

Grants, Redemptions, and Transfers of Membership Rights

304-C:118 Transfers, Etc. — Definitions.

- I. A transfer of membership rights by a member shall mean any voluntary or involuntary transfer or other disposition of all or any part of those rights to another person, with or without consideration, including:
 - (a) A transfer by sale, exchange, gift, or assignment;
 - (b) A transfer, whether by will, trust, or otherwise, taking effect upon the death of the member; and
 - (c) A transfer by operation of law, including a transfer in connection with a merger of a member that is an entity into another entity, by execution of legal process, or under a divorce or bankruptcy decree.
- II. The term “transfer” shall not include redemptions or pledges of membership rights.
- III. A redemption of a member’s membership rights shall mean the extinguishment of those rights in exchange for a distribution of cash, other property, or other consideration from the limited liability company to the member.
- IV. A grant of membership rights shall mean their issuance by the limited liability company to a member or other person.
- V. A pledge shall mean an arrangement under which a member provides another person with an interest in all or any portion of the member’s membership rights in order to secure an obligation of the member.

304-C:119 Nature of Membership Rights, Etc.

- I. Membership rights in a limited liability company are intangible personal property.
- II. A member has no interest in limited liability company property.
- III. Unless the operating agreement provides otherwise, the membership rights of members, other than the members’ limited liability company interests, are personal and non-transferable except to the extent that a transferee may succeed to membership rights under

the provisions of RSA 304-C:121, RSA 304-C:123, or RSA 304-C:124.

304-C:120 Limited Liability Company Grants of Membership Rights. Unless the operating agreement provides otherwise, after the formation of the limited liability company, the limited liability company shall not grant membership rights to a third party or additional membership rights to an existing member, except upon a unanimous vote of the members.

304-C:121 Transfers of Membership Rights. Unless the operating agreement provides otherwise, or as provided in RSA 304-C:123.

I. No member shall transfer all or any part of the member's membership rights to any transferee except upon a unanimous vote of the other members; and

II. Notwithstanding the members' voting in favor of the transfer of the membership rights, unless the transferee is admitted as a member of the limited liability company under the provisions of RSA 304-C:54, the transferee shall not be entitled to exercise the transferred management rights.

304-C:122 Pledges of Membership Rights.

I. Unless the operating agreement or RSA 304-C:123 provide otherwise, no member shall pledge all or any part of the member's membership rights to any person except upon a unanimous vote of the other members.

II. Unless the operating agreement provides otherwise, the pledge of any or all of the membership rights of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

304-C:123 Transfers or Pledges of Limited Liability Company Interests.

I. Unless the operating agreement provides otherwise, a member may transfer or pledge a limited liability company interest, in whole or in part, without the vote of any other member.

II. Unless the operating agreement or RSA 304-C:124 or RSA 304-C:125 provide otherwise, the transferee of a member's limited liability company interest shall not be entitled to participate in the management and affairs of a limited liability company or to exercise any other rights or powers of a member except rights in respect of the transferred limited liability company interest.

III. Unless the operating agreement provides otherwise, a limited liability company interest entitles the transferee to receive, to the extent transferred, the allocations and distributions to which the transferor would otherwise be entitled.

IV. Unless the operating agreement provides otherwise, and except to the extent assumed by agreement of the transferee of the limited liability company interest, until a transferee of a limited liability company interest becomes a member, the transferee shall have no liability as a member solely as a result of the transfer.

304-C:124 Right of Transferee of Limited Liability Company Interest or Other Membership Rights to Become a Member. Notwithstanding any provision of RSA 304-C:46 to the contrary, unless the operating agreement or RSA 304-C:153 provide otherwise, a transferee of a limited liability company interest or other membership rights shall become a member, to the extent of the transferred rights, upon the unanimous vote of all of the members of the limited liability company other than the transferring member.

304-C:125 Miscellaneous Rights, Duties, and Liabilities of Transferors and Transferees of Membership Rights.

I. A transferee of a membership right who becomes a member shall hold and may exercise only the membership rights transferred to the transferee. Except as provided in paragraph II, a transferee of a membership right who becomes a member shall have only the duties and liabilities of a member to which the transferee is subject under the operating agreement or under this act.

II. Notwithstanding paragraph I, unless the operating agreement provides otherwise:

(a) Except as provided in subparagraph II(b), a transferee of membership rights who becomes a member shall not be liable for liabilities to the limited liability company or to other persons to which the transferor was subject before the transfer.

(b) A transferee of all of a member's membership rights who becomes a member shall be liable for the outstanding obligations of the transferor to make contributions to the limited liability company to which the transferor was subject before the transfer.

(c) Notwithstanding subparagraph II(b), a transferee of all of a member's membership rights who becomes a member shall not be obligated for liabilities of the transferor to make contributions to the limited liability company that were unknown to the transferee at the time of the transfer and that the transferee could not reasonably ascertain from the operating agreement.

(d) A transferee of part or all of a member's membership rights who becomes a member shall not be liable for any obligation of the transferor to return to the limited liability company unlawful distributions to the transferor under RSA 304-C:93.

III. Unless the operating agreement provides otherwise, a transferor of part or all of the transferor's membership rights shall not be released from the liabilities of the transferor to the limited liability company or to other persons to which the transferor was subject before the transfer whether or not the transferee becomes a member.

Charging Orders

304-C:126 Charging Orders.

I. On application to a court of competent jurisdiction by any judgment creditor of (a) a member of a limited liability company (the "debtor-member") or (b) a transferee of all or any part of a member's limited liability company interest (a "transferee"), the court may enter a charging

order against the limited liability company in respect of the limited liability company interest of the debtor-member or the transferee for the unsatisfied amount of the judgment plus interest.

II.(a) A charging order constitutes a lien on a debtor-member's or transferee's limited liability company interest.

(b) Under a charging order, a judgment creditor has only the right to receive distributions to which the debtor-member or transferee would otherwise have been entitled from the limited liability company, and only to the extent of the judgment, including interest.

(c) A judgment debtor that obtains a charging order does not thereby become the holder of the debtor-member's or transferee's limited liability company interest.

III. This section does not deprive any judgment debtor of the benefit of any exemption law applicable to the judgment debtor's membership rights.

IV. Except as provided in paragraphs VI and VII, a charging order is the sole and exclusive remedy by which a judgment creditor of a debtor-member may satisfy a judgment from a debtor-member's membership rights or from the assets of a limited liability company. This section is not exclusive as to the rights of creditors with respect to the limited liability company interests of transferees.

V.(a) The remedy of execution upon a debtor-member's membership rights shall be unavailable to a judgment creditor attempting to satisfy a judgment against a debtor-member of a multi-member limited liability company.

(b) Except as provided in paragraph VI, the remedy of execution upon a debtor-member's membership rights shall be unavailable to a judgment creditor attempting to satisfy a judgment against a debtor-member of a single-member limited liability company.

VI.(a) If a judgment creditor shows to the satisfaction of a court of competent jurisdiction that distributions under a charging order in respect of the limited liability company interest of a debtor-member of a single-member limited liability company will not satisfy the judgment within a reasonable time, a charging order shall not be the sole and exclusive remedy by which the judgment creditor may satisfy the judgment against the member.

(b) Upon such a showing, the court may order the sale of the debtor-member's membership rights under an execution sale.

(c) A judgment creditor may make a showing to the court under subparagraph VI(a) that distributions under a charging order will not satisfy a judgment either (1) when the judgment creditor applies for the entry of a charging order under a member of a single-member limited liability company or (2) at any time thereafter.

VII. If, under paragraph VI, a court orders an execution sale of the membership rights of a debtor-member that is the member of a single-member limited liability company:

- (a) The purchaser shall obtain all of the member's membership rights and not merely the rights of an transferee;
- (b) The purchaser shall become the member of the limited liability company; and
- (c) The debtor-member whose membership rights have been sold shall cease to be a member.

VIII. Nothing in this section shall limit:

- (a) The rights of a creditor that has been granted a consensual security interest in the limited liability company interest or other membership rights of a member to pursue the remedies available to the secured creditor under other law applicable to secured creditors;
- (b) The principles of law and equity which affect fraudulent transfers;
- (c) The availability of the equitable principles of veil-piercing, equitable lien, or constructive trust, or other equitable principles not inconsistent with this section; or
- (d) The continuing jurisdiction of the court to enforce its charging order in a manner consistent with this section.

IX. In any action in a court of this state in which a judgment creditor seeks a charging order against a member or transferee of a foreign limited liability company, this section shall apply.

Limited Liability Company Dissolutions

304-C:127 Effect of Dissolution of Limited Liability Company. A limited liability company dissolved under this subdivision continues its existence as a limited liability company, but, on and after its dissolution, it may not carry on any business or other activity except that which is necessary to wind up and liquidate its business and internal affairs.

304-C:128 Dissolution, Winding-Up and Liquidation— Definitions. For purposes of this act, the following terms shall have the following meanings:

I. Dissolution. The dissolution of a limited liability company shall mean a change of its purpose to that of a limited liability company that may not carry on any business or other activity except as provided in RSA 304-C:127.

II. Winding-up. The winding-up of a limited liability company shall mean the process of concluding its existing business activities and all other activities in which it is engaged; concluding its internal affairs; and preparing for its liquidation.

III. Liquidation. The liquidation of a limited liability company shall mean the sale or other disposition of its assets and the distribution of these assets, or of the proceeds of the sale or other disposition of them, to its creditors and to the members.

304-C:129 Events of Dissolution—in General. A limited liability company shall be dissolved and its business and other activities and its internal affairs shall be wound up upon the first to

occur of the events set forth in this section. The effective date of each such dissolution shall be as set as follows:

- I. A limited liability company shall be dissolved as provided in the operating agreement. The effective date of the dissolution shall be the date of occurrence of the event or circumstance causing the dissolution under the operating agreement.
- II. Unless the operating agreement provides otherwise, a limited liability company shall be dissolved by majority vote of the members. The vote shall be in writing and shall specify the effective date of the dissolution. If there is no such writing, the effective date of the dissolution shall be the date of the vote.
- III. A limited liability company shall be dissolved if a court of competent jurisdiction issues enters a final decree of judicial dissolution under RSA 304-C:134 or RSA 304-C:135. The decree shall specify the effective date of the dissolution.
- IV. A limited liability company shall be dissolved if the New Hampshire secretary of state issues a notice of administrative dissolution under RSA 304-C:136. The notice of administrative dissolution shall specify the effective date of the dissolution.

304-C:130 Revocation of Dissolution by Majority Vote of the Members.

- I. Notwithstanding the dissolution of a limited liability company by majority vote of the members, and unless the operating agreement provides otherwise, a limited liability company shall not be dissolved and its internal affairs shall not be wound up if, before the filing of a certificate of cancellation of the limited liability company in the office of the secretary of state, the limited liability company is continued by majority vote of the members.
- II. A continuation of the limited liability company under paragraph I shall be retroactive to the effective date of the limited liability company's dissolution.
- III. After the members have dissolved the limited liability company under RSA 304-C:129, I, they may revoke the dissolution at any time before completing the wind-up of the limited liability company.
- IV. When a revocation of a dissolution becomes effective under paragraph I:
 - (a) The limited liability company shall be deemed to have carried on its business as if the dissolution had never occurred; and
 - (b) All of its otherwise legally valid actions during the period after its dissolution shall be deemed to have been legally valid.

304-C:131 Non-Dissolution of Single-Member Limited Liability Company.

- I. Unless the operating agreement provides otherwise, upon the death of an individual who is the only member of a limited liability company, the individual's membership shall pass to the individual's estate and the limited liability company shall not be dissolved.

II. Unless the operating agreement provides otherwise, upon the dissolution of an entity that is the only member of a limited liability company or upon the termination of a trust that is the only member of a limited liability company, the membership of the limited liability company shall pass automatically to the successor in interest of the entity or trust and the limited liability company shall not be dissolved.

304-C:132 Non-Dissolution of Limited Liability Company Upon Member Dissociation.

I. Unless the operating agreement provides otherwise and except as provided in paragraph II:

(a) The death, resignation, expulsion, bankruptcy, or dissolution of any member or the occurrence of any other event whose occurrence causes the dissociation of the member shall not cause the limited liability company to be dissolved or its internal affairs to be wound up; and

(b) Upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

II. The resignation of the last remaining member of a limited liability company shall terminate the limited liability company's existence as an entity.

304-C:133 Appointment of Successor Member Under Operating Agreement. An operating agreement may provide for the admission of a substitute member upon the dissociation of the last remaining member of a limited liability company.

304-C:134 Judicial Dissolution Upon Application by a Member.

I. Unless the operating agreement provides otherwise, upon application by a member, the superior court may decree the dissolution of a limited liability company in any of the following circumstances:

(a) It is not reasonably practicable for the limited liability company to carry on its business.

(b) A voting deadlock has occurred among the members and, upon the occurrence of the deadlock, the members have been unable to break the deadlock; and because of the deadlock, either irreparable injury to the limited liability company is threatened or being suffered or the limited liability company's business and internal affairs can no longer be conducted to its advantage.

II. In a proceeding brought under paragraph I, a court may order a remedy other than dissolution.

III. A member shall have the right to apply to the superior court to decree the dissolution of a limited liability company, and the superior court may issue such a decree, in any of the following circumstances:

(a) The limited liability company has procured its certificate of formation through fraud.

- (b) The limited liability company has exceeded or abused its lawful authority under this act.
- (c) The limited liability company has carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner.
- (d) The limited liability company has abused its power contrary to the public policy of the state.

304-C:135 Judicial Dissolution Upon Application by Attorney General. The attorney general may apply to the superior court for a decree of dissolution of a limited liability company upon the occurrence of any of the grounds stated in RSA 304-C:134, III.

304-C:136 Administrative Dissolution. The secretary of state may administratively dissolve a limited liability company if:

- I. For 2 consecutive years, the limited liability company does not pay within 60 days after they are due any annual report fees or penalties imposed by this act or other law;
- II. The limited liability company for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;
- III. The limited liability company is without a registered agent or registered office in this state for 60 days or more;
- IV. The limited liability company does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- V. The limited liability company's period of duration stated in its certificate of formation expires.

304-C:137 Procedures For and Certain Effects of Administrative Dissolution.

- I. If the secretary of state determines that one or more grounds exist under RSA 304-C:136 for dissolving a limited liability company, the secretary of state shall administratively dissolve the limited liability company by signing a notice of dissolution and mailing the notice and an application for reinstatement to the limited liability company at its principal address. The notice shall recite the grounds for the dissolution and the effective date of the dissolution.
- II. The administrative dissolution of a limited liability company shall not terminate the authority of its registered agent.
- III. Except with the written consent of the limited liability company, the secretary of state shall not, for a period of 120 days after the date of mailing of a notice of administrative dissolution under paragraph I, permit any individual or any corporation, limited liability company, or other business entity to assume:
 - (a) A name that is the same as or similar to the name of a limited liability company

administratively dissolved under this section; or

- (b) A trade name registered by the limited liability company under RSA 349.

304-C:138 Reinstatement Following Administrative Dissolution.

I. A limited liability company administratively dissolved under RSA 304-C:137 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application shall:

- (a) Recite the name of the limited liability company and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:32; and
- (d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, if the application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

II.(a) If the secretary of state determines that the application under paragraph I contains the information required by that paragraph, that the information is correct, and that the limited liability company name is available for registration, the secretary may (1) cancel the notice of dissolution, (2) prepare a notice of reinstatement that recites the secretary's determination and the effective date of reinstatement, and (3) mail the notice to the limited liability company.

(b) If the application for reinstatement includes a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company. The notice shall constitute an amendment to the certificate of formation.

III. When the reinstatement is effective:

- (a) It shall relate back to and take effect as of the effective date of the administrative dissolution;
- (b) The limited liability company may resume carrying on its business as if the administrative dissolution had never occurred; and
- (c) All of the limited liability company's otherwise legally valid actions during the period of its dissolution shall be deemed to be legally valid.

304-C:139 Winding Up And Liquidation Of Limited Liability Companies.

I. Unless the operating agreement provides otherwise, the members or managers who have

authority under RSA 304-C:47 to manage the limited liability company before the dissolution may wind up and liquidate the business and internal affairs of the limited liability company.

II. Upon application to the superior court by a member or by a member's legal representative or by the transferee of all or any part of a member's limited liability company interest, the superior court may appoint a liquidating trustee to wind up and liquidate a limited liability company if the applicant shows that one or more of the members or managers have engaged in wrongful conduct or if there is any other equitable cause for the appointment.

III. The persons winding up the business or internal affairs of the limited liability company and liquidating the limited liability company in the name of and for and on behalf of the limited liability company may:

- (a) Prosecute and defend suits;
- (b) Settle and close the business of the limited liability company;
- (c) Dispose of and transfer the property of the limited liability company;
- (d) Discharge the liabilities of the limited liability company;
- (e) Distribute to the members any remaining assets of the limited liability company; and
- (f) Take any other actions necessary or appropriate to wind up and liquidate the limited liability company.

IV. Persons may act in accordance with this section without affecting the personal liability of members and managers and without imposing personal liability on a liquidating trustee.

304-C:140 Agency Power of Managers and Members After Limited Liability Company Dissolution.

I. Unless the operating agreement or paragraphs II and III provide otherwise, after the dissolution of the limited liability company, each of the members having authority to wind up the limited liability company's business and internal affairs and to liquidate the limited liability company can bind the limited liability company:

- (a) By any act appropriate for winding up and liquidating the limited liability company or for completing transactions unfinished at its dissolution; and
- (b) By any act that would have bound the limited liability company if it had not been dissolved if the other party to the transaction does not have actual notice of the dissolution.

II. An act of a member which would be binding under paragraph I or would be otherwise authorized but which is in contravention of a restriction on authority in the operating agreement shall not bind the limited liability company to persons having actual knowledge of the restriction.

III. If the operating agreement of a limited liability company interest vests the management of the limited liability company in a manager or managers:

- (a) A manager shall have the authority provided to members in RSA 304-C:139, I; and
- (b) No member shall have this authority unless the member is also a manager.

304-C:141 Certificate of Dissolution; Distributions of Assets Upon Liquidation of Limited Liability Company.

I. Before making any distributions of assets to any members and managers upon the winding up of a limited liability company, the limited liability company or any person or persons authorized to wind up the limited liability company's internal affairs shall first obtain a certificate of dissolution from the department of revenue administration in accordance with RSA 77-A:18.

II. Upon the completion of the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

- (a) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;
- (b) Unless an operating agreement provides otherwise, to members and former members in satisfaction of liabilities for distributions under RSA 304-C:94 and RSA 304-C:105; and
- (c) Unless an operating agreement provides otherwise, to members first for the return of their contributions and second respecting their limited liability company interests.

III. Distributions to members and former members under subparagraph II(b) shall be allocated in accordance with RSA 304-C:95.

304-C:142 Certificate of Cancellation of Certificate of Formation. After the dissolution of the limited liability company under RSA 304-C:129, and the completion of its winding-up and liquidation, the limited liability company may file a certificate of cancellation with the secretary of state. This certificate shall set forth:

- I. The name of the limited liability company;
- II. The reason for filing the certificate of cancellation;
- III. The effective date, which shall be a stated specific date, of the certificate if it is not to be effective upon the filing; and
- IV. Any other information the members or managers filing the certificate shall deem proper.

304-C:143 Dispositions of Known Claims Against Dissolved Limited Liability Company.

I. After the effective date of the dissolution of a limited liability company, a limited liability company may dispose of known claims against it by complying with the procedures described in paragraph II.

II. The limited liability company shall, within 60 days after the effective date of its dissolution, notify claimants who have known claims against it by sending them by regular mail a written notice of its the dissolution. The written notice of dissolution shall:

(a) State the effective date of the dissolution;

(b) State the deadline, which may not be fewer than 120 days after the date of the written notice, by which the limited liability company must receive a written claim from the claimant;

(c) Describe the information that must be included in the written claim, which information shall include only information that is reasonable for the limited liability company to require of the claimant;

(d) Provide a mailing address where the written claim shall be sent; and

(e) State that the claim will be barred if the limited liability company does not receive the written claim by the deadline set forth pursuant to subparagraph (b).

III. A known claim against the limited liability company shall be barred if the limited liability company gives the claimant a written notice under paragraph II and the claimant fails to deliver a written claim to the limited liability company by the deadline set forth in subparagraph II(b).

IV. A known claim against the limited liability company shall be barred if:

(a) The limited liability company gives a claimant a written notice of a known claim in accordance with paragraph II.

(b) The claimant delivers a written claim to the limited liability company by the deadline set forth in subparagraph II(b);

(c) The limited liability company provides the claimant with a written rejection of the written claim within 30 days after receiving the written claim; and

(d) The claimant fails to commence a proceeding against the limited liability company to enforce the claim within 90 days after the date of the rejection notice.

V. For purposes of this subdivision, a “known claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

304-C:144 Disposition of Unknown Claims Against Dissolved Limited Liability Company.

I. After a limited liability company has been dissolved, it may dispose of unknown claims against it by following the procedures described in paragraph II.

II. A limited liability company shall publish a notice stating that it has been dissolved and that it is winding up its business and internal affairs. In this notice, it shall request that persons with claims against it present them to it in accordance with the notice.

- (a) The notice must be published once in a newspaper of general circulation in the county where the limited liability company's principal office, or, if none in this state, its registered office, is located.
- (b) The notice must state the effective date of the limited liability company's dissolution.
- (c) The notice must contain the information that must be included in a claim, which information shall include only information that is reasonable for the limited liability company to require of the claimant.
- (d) The notice must provide a mailing address where the claim shall be sent.
- (e) The notice must state that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced by the third anniversary of the effective of the limited liability company's dissolution.

III. If the limited liability company publishes a newspaper notice in accordance with paragraph II, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within 3 years after the publication date of the notice:

- (a) A claimant with an unknown claim against the limited liability company.
- (b) A claimant with a known claim against the limited liability company who did not receive written notice from the limited liability company under RSA 304-C:143, II.
- (c) A claimant with a known claim against the limited liability company who sent a timely written claim to the limited liability company under RSA 304-C:143, II but whose written claim was not acted on by the limited liability company.
- (d) A claimant with a claim against the limited liability company whose claim is contingent or based on an event occurring after the effective date of the limited liability company's dissolution.

IV. A claim may be enforced under this section:

- (a) Against the limited liability company to the extent of its undistributed assets; or
- (b) If the limited liability company has distributed its assets in liquidation, against a member of the limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less. However, a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member.

304-C:145 Late Reinstatements—In General.

I. A limited liability company administratively dissolved under RSA 304-C:136 may apply to the secretary of state for late reinstatement if more than 3 years have expired since the effective date of dissolution. The application shall:

- (a) Recite the name of the limited liability company and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:32;
- (d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;
- (e) Contain a statement asserting that no lawsuits are pending against the limited liability company;
- (f) Contain a statement explaining the reason that reinstatement is being requested;
- (g) Include all of the annual report fees, for each year since the date of dissolution; and
- (h) Contain a statement from the commissioner of the department of employment security showing that to the best of the commissioner's knowledge, as of the date of the statement, the limited liability company has paid all of its contributions or that it was not liable for any contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to the future payment of any contributions.

III.(a) If the secretary of state determines that (1) the application contains the information required by paragraph I, (2) the limited liability company name is available for registration, and (3) it is accompanied by the fee required in RSA 304-C:191, III(f), the secretary of state shall schedule a public hearing on the late reinstatement.

- (b) The public hearing shall be held before the secretary of state, or designee and the attorney general, or designee.
- (c) Any interested party shall have the right to testify at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on April 1 and September 1.
- (d) If any such date falls upon a Saturday, Sunday, or legal holiday, the hearing shall be held on the first business day after each date. An application for late reinstatement must be received at least one month before a hearing date in order to be scheduled for that date.

III. Notice of the late reinstatement hearing shall be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal

office, or, if none in this state, its registered office, is or was last located. The notice shall:

(a) Clearly state the reason for the hearing.

(b) State the date, time, and location of the hearing.

(c) Indicate that all interested parties are encouraged to attend or submit written comments within one week of the hearing.

(d) Include the mailing address of the secretary of state.

IV. If, after the public hearing, the secretary of state, in conjunction with the attorney general, determines that the information submitted in the application for late reinstatement is correct and that the limited liability company should be reinstated, the secretary of state shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the determination and the effective date of reinstatement and mail said notice to the limited liability company.

V.(a) If the application for reinstatement included a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company and the fee required under RSA 304-C:191, II(c), and the notice shall constitute an amendment to the certificate of formation.

(b) If the application for reinstatement included a change of the registered agent, the notice shall set forth the name of the new registered agent and the fee required under RSA 304-C:191, II(b).

VI. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

VII. Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to RSA 421-B:26-a.

304-C:146 Appeals From Denials of Late Reinstatements.

I. If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary shall mail the limited liability company a written notice that explains the reason or reasons for denial.

II. The limited liability company may appeal the denial of reinstatement to the superior court within 30 days after service of the notice of denial is perfected.

III. The limited liability company shall appeal the denial by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

IV. The court may summarily order the secretary of state to reinstate the dissolved limited

liability company or may take other action the court considers appropriate.

V. The court's final decision may be appealed as in other civil proceedings.

Statutory Conversions

304-C:147 Statutory Conversion—Definition. A statutory conversion is a procedure:

- I. Which involves only a single business entity; and
- II. Under which the converting business entity, as defined in RSA 304-C:148, II:
 - (a) Converts its business organization form to a different business organization form; but
 - (b) Remains the same business entity after the statutory conversion as before.

304-C:148 Other Business Entity; Converting Business Entity.

- I. An other business entity means an entity whose business organization form is not the limited liability company business organization form.
- II. A converting business entity means an other business entity that intends to make or that makes a statutory conversion of its business organization form to the limited liability company form.

304-C:149 Statutory Conversions of Other Business Entities to Limited Liability Companies.

- I. Any other business entity may make a statutory conversion of its business organization form to the limited liability company business organization form under this act by complying with the requirements of this section and with applicable law governing the other business entity.
- II. Each other business entity that proposes to make a statutory conversion of its business organization form to the limited liability company business organization form shall approve a plan of statutory conversion in the manner and by the vote required by the laws applicable to that other business entity.
- III. The plan of statutory conversion of a converting business entity that is making a statutory conversion of its business organization form to the limited liability company business organization form shall set forth the terms and conditions of the conversion of the shares of stock of a corporation, the partnership, interests of a partnership or a limited partnership or other ownership interests in the converting business entity, as the case may be, into membership rights in the limited liability company.

IV. A converting business entity making a statutory conversion under this section shall file with the secretary of state:

- (a) A certificate of statutory conversion to a limited liability company;

(b) A certificate of formation that complies with the requirements of RSA 304-C:31; and

(c) The certificate required by RSA 421-B:11, II.

V. A certificate of statutory conversion under subparagraph IV(a) shall state:

(a) The date on which and the jurisdiction in which the converting business entity was first created, formed, or incorporated, or otherwise came into being and, if this jurisdiction has changed, the jurisdiction immediately before the converting business entity's statutory conversion under this subdivision.

(b) The name of the converting business entity immediately before the filing of its certificate of statutory conversion under paragraph IV(a).

(c) The name of the limited liability company as set forth in its certificate of formation filed in accordance with RSA 304-C:31.

(d) If the converting business entity is a corporation:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group is sufficient for approval by that voting group.

(e) That the plan of statutory conversion of the converting business entity is on file at the principal place of business of that entity after its statutory conversion and the address of that principal place of business.

(f) That a copy of the plan of statutory conversion will be furnished by the converting business entity as the limited liability company, on request and without cost, to any shareholder, limited partner, general partner, or other equity interest holder of the converting business entity.

VI. A statutory conversion of the business organization form of an other business entity to the limited liability company form takes effect upon the effective date and time of the certificate of formation under subparagraph IV(b).

VII. On the effective date of a statutory conversion under this subdivision, the business organization form of the converting business entity shall be converted to the limited liability company business organization form, and the converting business entity as a limited liability company shall thereafter be subject to all of the provisions of this act.

VIII. Except as provided in paragraph VII:

(a) The rights, privileges, immunities, and powers of the converting business entity after its

statutory conversion shall be the same as before the statutory conversion.

- (b) All property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to the converting business entity before its statutory conversion shall remain vested in the converting business entity after the statutory conversion without further act or deed and without any deemed or actual transfer.
- (c) The title to all real estate and other interests therein vested in the converting business entity after its statutory conversion shall not revert or be in any way impaired by reason of the conversion and shall not be transferred or deemed to be transferred by reason of the conversion.
- (d) The converting business entity shall, after its statutory conversion, be liable for all liabilities and obligations of converting business entity before the statutory conversion. Any claim existing or action or proceeding pending by or against the converting business entity before its statutory conversion may be prosecuted as if the statutory conversion had not taken place, or the converting business entity as a limited liability company may be substituted in the action.
- (e) Neither the rights of creditors nor any liens on the property of the converting business entity shall be impaired by reason of its statutory conversion.
- (f) The interests or shares of the converting business entity that are to be converted into membership rights of the entity as a limited liability company under the terms of the plan of statutory conversion shall be so converted, and the former holders of these interests shall be entitled only to the membership rights in the converting business entity as a limited liability company as provided in the plan of statutory conversion.
- (g) The statutory conversion of the converting business entity shall not effect nor to be deemed to effect for any purpose a transfer of any property rights or other rights of the converting business entity, including rights in respect of real estate.

IX. The statutory conversion of the converting business entity shall not constitute nor be deemed to constitute a dissolution of the converting business entity, and, in connection with its statutory conversion, the converting business entity shall not be required to wind up its affairs or to pay its liabilities or to make a liquidating distribution of its assets.

304-C:150 Approvals of Statutory Conversions of Limited Liability Companies to Other Business Entities.

I. An entity whose business organization form is that of a limited liability company under this act may make a statutory conversion of its business organization form to another business organization form authorized by applicable statute upon (1) the authorization of the statutory conversion in accordance with this section; and (2) the fulfillment of the requirements for a statutory conversion under the statute governing entities having the other business organization form.

II. If the limited liability company agreement specifies the manner of authorizing a statutory conversion of a business entity that is a limited liability company under this act, the statutory conversion shall be authorized as specified in the limited liability company agreement of that entity.

III. If the limited liability company agreement of the limited liability company referred to in paragraph II does not specify the manner of authorizing a statutory conversion of the limited liability company and does not prohibit a statutory conversion of the limited liability company, the statutory conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger that involves the limited liability company as a constituent party to the merger.

IV. If the limited liability company agreement of the limited liability company referred to in paragraph II does not specify the manner of authorizing a statutory conversion of the limited liability company or a merger that involves the limited liability company as a constituent party and does not prohibit a statutory conversion of the limited liability company, the statutory conversion shall be authorized by majority vote of the members of the limited liability company, or, if there is more than one class or group of members, then by each class or group of members, in either case, by majority vote of the members in each class or group.

Single-Member Limited Liability Companies—Special Provisions

304-C:151 Events of Dissociation of Individuals Who Are Members of Single-Member Limited Liability Companies. Notwithstanding any other provision of this act, individuals who are members of single-member limited liability companies shall, unless the operating agreement provides otherwise, be dissociated only upon their withdrawal or death.

304-C:152 Effect of Withdrawal of Member of Single-Member Limited Liability Company. Unless the operating agreement provides otherwise, upon the withdrawal of a member of a single-member limited liability company, the limited liability company shall be deemed to be dissolved and shall be wound up and liquidated by the member or by any other person that the member appoints for this purpose and that accepts this appointment.

304-C:153 Successor to Deceased Member of Single-Member Limited Liability Company Becomes Member. Unless the operating agreement provides otherwise, a person who succeeds to the limited liability company interest of a deceased member of a single-member limited liability company is admitted as the member of the limited liability company without further action.

304-C:154 Provisions in Other Parts of This Act Relevant to Single-Member LLCs. The provisions in other parts of this act that specifically apply to single-member LLCs are the following:

I. RSA 304-C:43;

II. RSA 304-C:100, VI;

III. RSA 304-C:126, VI;

IV. RSA 304-C:126, VII; and

V. RSA 304-C:131.

Mergers Involving Limited Liability Companies

304-C:155 Mergers of Limited Liability Companies With Other Business Entities—In General.

I. Unless the operating agreement provides otherwise and subject to any law applicable to other business entities, one or more domestic limited liability companies may merge with or into one or more domestic limited liability companies or other business entities authorized by applicable statute to merge with a limited liability company, with the limited liability company or other business entity, as the merger agreement shall provide, being the surviving entity.

II. Rights or securities of or interests in a constituent entity may be exchanged for or converted into cash, property, obligations, rights, or securities of or interests in the surviving entity or of any other business entity.

304-C:156 Merger Approvals.

I. Unless the operating agreement provides otherwise, a limited liability company that is a party to a proposed merger shall approve the merger agreement by majority vote of the members, or if there is more than one class or group of members, then by majority vote of the members of each class or group of members.

II. Each other business entity and foreign limited liability company that is a party to a proposed merger to be made under RSA 304-C:155 shall approve the merger in the manner and by the vote required by the laws applicable to such other business entity or foreign limited liability company and each constituent entity's governing documents.

III. Each constituent entity shall have such rights to abandon the merger as are provided for in the merger agreement or in the laws applicable to such constituent entity.

304-C:157 Agreements of Merger.

I. Each constituent entity shall enter into a written agreement of merger, which shall be approved in accordance with RSA 304-C:156.

II. The agreement of merger shall set forth:

(a) The name of each constituent entity and the name of the surviving entity into which each other constituent entity merges;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the interests in each limited liability company and the shares of stock or other interests in each other business entity that is a party to the merger

into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, or of any other constituent entity, or, in whole or in part, into cash or other property;

(d) Any amendments to the certificate of formation of a limited liability company, or articles of incorporation of a corporation, or certificate of limited partnership of a limited partnership or the partnership agreement of a general partnership or a limited partnership, or any other organic documents of a constituent entity, as the case may be, of the surviving entity that are to be effected by the merger, or that no such changes are to be effected; and

(e) Such other provisions relating to the merger as are deemed necessary or desirable.

III.(a) An agreement of merger approved under RSA 304-C:156 may effect any amendment to a operating agreement for a limited liability company if it is the surviving entity in the merger.

(b) If the surviving entity is a limited liability company, an approved agreement of merger may also provide that the operating agreement of any constituent limited liability company to the merger, including a limited liability company formed for the purpose of consummating a merger, shall be the operating agreement of the surviving entity.

(c) Any amendment to a operating agreement or adoption of a new operating agreement shall be effective at the effective time or date of the merger.

IV. The provisions of this section shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a operating agreement or other agreement or as otherwise permitted by law.

304-C:158 Certificates of Merger.

I. The surviving entity shall deliver to the secretary of state a certificate of merger signed by each constituent entity setting forth:

- (a) The name and jurisdiction of formation or organization of each constituent entity;
- (b) That an agreement of merger has been approved and signed by each constituent entity;
- (c) The name of the surviving entity;
- (d) To the extent permitted by RSA 304-C:29, the future effective date and time of the merger, which shall be a date or time certain, if it is not to be effective at the close of business on the date of filing of the certificate of merger;
- (e) That the agreement of merger is on file at a place of business of the surviving entity, and the address of that place of business;
- (f) That a copy of the agreement of merger will be furnished by the surviving entity, on request and without cost, to any person holding an interest in any constituent entity; and
- (g) If the surviving entity is not a business entity organized under the laws of this state, a

statement that such surviving entity:

- (1) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger; and
- (2) Appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

II. A merger takes effect upon the later of the effective date of the filing of the certificate of merger or the date set forth in the certificate of merger.

III. The certificate of merger shall be signed by a limited liability company that is a party to the merger and shall be filed with the secretary of state.

IV. A certificate of merger shall constitute a certificate of cancellation for a limited liability company which is not the surviving entity in the merger.

304-C:159 Merger Effects. A merger under this act has the following effects:

I. Each constituent entity shall be merged into a single entity, which shall be the entity designated in the plan of merger as the surviving entity;

II. Each constituent entity, except the surviving entity, shall cease to exist;

III. The surviving entity shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the type of business entity that is the surviving entity;

IV. All property, real, personal, and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity without further act or deed;

V. The title to all real estate and any interest therein, vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger;

VI. As of the effective date the surviving entity shall be liable for all liabilities and obligations of each of the constituent entities so merged, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger had not taken place, or the surviving entity may be substituted in the action;

VII. Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger; and

VIII. The interests in a limited liability company or shares or other interests in an other business entity that are to be converted or exchanged into interests, shares or other securities, cash, obligations, or other property under the terms of the merger agreement are so converted, and the former holders of these interests are entitled only to the rights provided in the merger agreement or the rights otherwise provided by law.

Dissenters' Rights

304-C:160 Definitions. In this subdivision:

I. "Dissenter" means a member who is entitled to dissent from limited liability company action under RSA 304-C:161 and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's limited liability interest of a limited liability company immediately before the effective date of the limited liability action referred to in RSA 304-C:161, excluding any appreciation or depreciation in anticipation of the limited liability action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304-C:161 that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months, or the closest maturity thereto, as of the auction date for such treasury bills closest to such effective date.

IV. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under RSA 304-C:161, and includes any successor by merger or conversion.

V. "Member" includes a former member who has ceased to be a member, but who was not entitled to payment for the value of the member's limited liability interest upon cessation of the former member's membership.

304-C:161 Right of Members to Dissent—in General.

I. A member of a limited liability company is entitled to dissent from, and obtain payment of the fair value of the member's limited liability company interest, upon any of the following actions:

- (a) Consummation of a plan of merger to which the limited liability company is a party;
- (b) Consummation of a plan of statutory conversion of the limited liability company to some other business form;
- (c) An amendment to the operating agreement:
 - (1) Altering or abolishing a right in respect of distribution;
 - (2) Altering or abolishing a right to voluntarily withdraw; or

(3) Altering or abolishing any right of a member to vote on any matter, other than alteration by dilution through the admission of other members or acceptance of contributions.

II. A member entitled to dissent and obtain payment for such member's limited liability company interest under this subdivision may not challenge the limited liability company action creating such member's entitlement unless the action is unlawful or fraudulent with respect to the member or the limited liability company.

304-C:162 Notices by Limited Liability Companies to Members Concerning Members' Right to Dissent.

I. If the proposed action of the limited liability company creating dissenters' rights under RSA 304-C:161 is submitted to a vote at a meeting of the members, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

II. If the limited liability company action creating dissenters' rights under RSA 304-C:161 is taken without a vote of the members, the limited liability company shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-C:164.

III. A limited liability company's failure to give notice under this RSA 304-C:162 shall not invalidate the limited liability company action.

304-C:163 Notices by Dissenting Members to Limited Liability Companies Concerning Members' Intent to Demand Payment.

I. If a proposed action of a limited liability company creating dissenters' rights under RSA 304-C:161 is submitted to a vote at a meeting of the members, a member who wishes to assert dissenters' rights shall:

(a) Deliver to the limited liability company before the vote is taken a written notice of the member's intent to demand payment for the member's limited liability company interest if the proposed action is effectuated.

(b) Not vote the member's limited liability company interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any member to whom the limited liability company has failed to provide the notice required by RSA 304-C:162.

III. A member who does not satisfy the requirements of this section is not entitled to payment for such member's limited liability company interest under this subdivision.

304-C:164 Dissenters' Notices Required to be Provided by Limited Liability Companies to Members.

I. If a proposed action of a limited liability company creating dissenters' rights under RSA 304-C:161 is authorized at a meeting of the members, the limited liability company shall deliver a

written dissenters' notice to all members who have satisfied the requirements of RSA 304-C:163.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited liability company was authorized by the members or effectuated, whichever is the first to occur, and shall:

- (a) State where the payment demand shall be sent;
- (b) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action and requires that the person asserting dissenters' rights certify whether or not the member acquired limited liability company interest before that date;
- (c) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph I is sent; and
- (d) Be accompanied by a copy of this subdivision if the limited liability company has not previously sent a copy of this subdivision to the member under RSA 304-C:162.

304-C:165 Duty of Dissenters to Demand Payment, Etc.

I. A member sent a dissenters' notice described in RSA 304-C:164 must demand payment and certify whether the member acquired the limited liability company interest before the date required to be set forth in the dissenters' notice under RSA 304-C:164.

II. A member who demands payment under paragraph I retains all of the rights of a member until those rights are canceled or modified by completion of the proposed action of the limited liability company.

III. A member who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such member's membership rights under this subdivision.

IV. A demand for payment filed by a member may not be withdrawn unless the limited liability company with which it was filed or the surviving limited liability company or other business entity consents to such withdrawal.

304-C:166 Limited Liability Companies' Making of Payments to Dissenting Members.

I. Except as provided in RSA 304-C:168, as soon as the proposed limited liability company action is effectuated, or upon receipt of a payment demand, whichever is later, the limited liability company shall pay each dissenter who complied with RSA 304-C:165 the amount the limited liability company estimates to be the fair value of such dissenter's membership rights, plus accrued interest.

II. The payment must be accompanied by:

- (a) The limited liability company's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;
- (b) A statement of the limited liability company's estimate of the fair value of the membership rights;
- (c) An explanation of how the value of the membership rights was calculated;
- (d) A statement of the dissenter's right to demand payment under RSA 304-C:169; and
- (e) A copy of this subdivision, if the limited liability company has not previously sent a copy of this subdivision to the member under RSA 304-C:162 or RSA 304-C:164.

304-C:167 Limited Liability Company Failures to Take Actions Giving Rise to Dissenters' Rights. If the limited liability company does not effectuate the proposed action that gave rise to the dissenters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-C:162 and repeat the payment demand procedure if it effectuates the proposed action.

304-C:168 Dissenters' Rights Of Persons With After-Acquired Limited Liability Company Interests. A limited liability company may elect to withhold payment required by RSA 304-C:166 from a dissenter unless the dissenter was a member before the date set forth in the dissenters' notice as of the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action.

304-C:169 Procedures if Members are Dissatisfied With Payments or Offers of Payment.

I. A dissenter may notify the limited liability company in writing of the dissenter's own estimate of the fair value of such dissenter's limited liability company interest and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RSA 304-C:166, if:

- (a) The dissenter believes that the amount paid under RSA 304-C:166 is less than the fair value of the dissenter's limited liability company interest or that the interest due is incorrectly calculated; or
- (b) The limited liability company fails to make payment under RSA 304-C:166 within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under paragraph I within 30 days after the limited liability company made or offered payment for such dissenter's limited liability company interest.

304-C:170 Appraisal Actions.

I. If a demand for payment under RSA 304-C:169 remains unsettled, the limited liability

company shall commence a proceeding within 60 days after receiving the payment demand and petition the superior court to determine the fair value of the limited liability company interest and accrued interest. If the limited liability company does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

II. The limited liability company shall commence the proceeding in superior court of the county where the limited liability company's principal executive office or, if none in this state, its registered office, is located.

III. If the limited liability company is a surviving foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged or converted into with the foreign limited liability company was located.

IV. The limited liability company shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their limited liability company interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

V. The jurisdiction of the court in which the proceeding is commenced under paragraph I is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings.

VI. Each dissenter made a party to the proceeding shall be entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's membership rights plus accrued interest exceeds the amount paid by the limited liability company; or

(b) For the fair value, plus accrued interest, of such dissenter's after-acquired membership rights for which the limited liability company elected to withhold payment under RSA 304-C:168.

VII. The limited liability company shall be entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership rights, plus accrued interest, is less than the amount paid by the limited liability company to each dissenter.

304-C:171 Allocations of Court Costs and Counsel Fees in Appraisal Actions.

I. The court in an appraisal proceeding commenced under RSA 304-C:170 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the dissenters, in amounts the

court finds equitable, to the extent the court finds the dissenters acted arbitrarily or not in good faith in demanding payment under RSA 304-C:169.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of RSA 304-C:161 through RSA 304-C:169.

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amount awarded to the dissenters who were benefited.

304-C:172 Procedures Relating to Transferees of Limited Liability Company Interests.

I. If the member has ceased to be a member upon transfer of his or her limited liability company interest, the transferees of the member's limited liability company interest shall be entitled to exercise all rights of the member under RSA 304-C:161 through RSA 304-C:171.

II. When a transfer of all or a portion of a member's limited liability company interest is in effect and a copy is delivered to the limited liability company before the action described in RSA 304-C:166, then, as to that limited liability company interest, the provisions of RSA 304-C:160 through RSA 304-C:171 must be followed subject to the requirements of this section.

III. If the member has not ceased to be a member before the action described in RSA 304-C:166, all rights to be exercised and actions to be taken by a member under RSA 304-C:161 through RSA 304-C:171 shall be exercised or taken by the member and not by an transferee of the member's limited liability company interest.

IV. As between the limited liability company and the transferees of limited liability company interests in the limited liability company, the actions taken or omitted by the member bind the transferees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-C:166, the limited liability company shall forward to the dissenting member:

(1) The materials described in RSA 304-C:166, II;

(2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the transferees of the limited liability company interest according to the terms in of the transfer reflected in the required records; and

(3) A statement of that allocation.

(b) If the dissenting member accepts the amount of the offer made under RSA 304-C:166 but disputes the allocation, the dissenter shall promptly so notify the limited liability company and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation.

(c) The dissenting member shall commence the proceeding in superior court of the county in which the principal office of the limited liability company or, if none, its registered office, is located, or in the case of a surviving foreign limited liability company or other entity that is complying with this section following a merger with or conversion of a limited liability company, the member shall commence the proceeding in superior court of the county in this state in which the last registered office of the limited liability company was located.

V. The petition filed under subparagraphs IV(b) shall name as parties the member, the limited liability company and all transferees of the member's limited liability interest. Upon being served with the petition, the limited liability company shall promptly pay into the court the amount offered under subparagraph IV(a) and shall then be dismissed from the proceeding.

VI. If the dissenter considers the amount offered under subparagraph IV(a) inadequate, the dissenter may decline the offer and demand payment under RSA 304-C:169. If the dissenter makes demand for payment, RSA 304-C:170 and RSA 304-C:171 apply with the court having jurisdiction to determine the correctness of the allocation.

VII. If the dissenting member fails to act under RSA 304-C:169, then:

(a) As to the limited liability company, both the member and the transferees of the member's limited liability company interests are limited to the amount and allocation offered under paragraph IV; and

(b) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under paragraph IV.

VIII. If the member has ceased to be a member upon the transfer of the member's limited liability company interest, the transferees of the member's limited liability company interest shall be entitled to exercise all rights of the member under RSA 304-C:161 through RSA 304-C:171.

Foreign Limited Liability Companies

304-C:173 Law Governing Foreign Limited Liability Companies.

I. Internal Affairs. The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its members and managers.

II. A foreign limited liability company shall not be denied registration by reason of any difference between those laws and the laws of New Hampshire.

III. A foreign limited liability company shall be subject to and have the benefit of RSA 304-C:21 and RSA 304-C:22.

304-C:174 Transactions Not Constituting Doing Business.

I. The following activities of a foreign limited liability company, among others, do not constitute doing business within the meaning of RSA 304-C:175:

- (a) Maintaining, defending, or settling any proceeding;
- (b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature; or
- (k) Transacting business in interstate commerce.

II. The foreign limited liability company shall not be considered to be doing business solely because it:

- (a) Owns a controlling interest in a corporation that is doing business;
- (b) Is a limited partner of a limited partnership that is doing business; or
- (c) Is a member or manager of a limited liability company or foreign limited liability company that is doing business.

III. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation

under any other law of this state, and nothing in this section shall be construed to preclude a determination that a foreign limited liability company is carrying on a business activity in this state within the meaning of RSA 77-A:1, XII.

304-C:175 Requirement of Registration by Foreign Limited Liability Companies; Applications for Registration. Before doing business in New Hampshire, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall pay the fee required by RSA 304:C-191, II(h) and shall file an application for registration as a foreign limited liability company, setting forth:

- I. The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in New Hampshire;
- II. The state, territory, possession, or other jurisdiction or country where formed, the date of its formation, and a certificate of existence, or document of similar import, duly authorized by the secretary of state or other official having custody of limited liability company records in the state or country under the law of which it was formed, issued not more than 60 days before the application is received by the secretary of state;
- III. The nature of the business or purposes to be conducted or promoted in New Hampshire;
- IV. The address of the registered office and name and address of the registered agent for service of process required to be maintained under RSA 304-C:177, IV; and
- V. The name and address of any manager or member signing the application.

304-C:176 Issuance of Registrations.

- I. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid:
 - (a) The secretary shall certify that the application has been filed by endorsing upon the original application the word “filed,” and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud.
 - (b) The secretary shall file and index the endorsed application.
- II. The secretary shall return a copy of the application, similarly endorsed, to the person who filed the application or such person’s representative.

304-C:177 Names of Foreign Limited Liability Companies; Registered Office; Registered Agent.

- I. A foreign limited liability company may register with the secretary of state under its name, provided however:
 - (a) The name must be one that could be registered by a domestic limited liability company;

- (b) The name under which a foreign limited liability company is registering must include the words “limited liability company” or the abbreviation “L.L.C.,” “LLC,” or similar abbreviation;
- (c) A foreign limited liability company may use a fictitious name under which it may register and transact business in this state if its real name has been determined by the secretary of state to be unavailable;
- (d) A foreign limited liability company name shall not contain language stating or implying that it is organized for a purpose other than that permitted by RSA 304-C:21;
- (e) Except as authorized by subparagraphs I(f) and (g), a foreign limited liability company name or a fictitious name used by a foreign limited liability company, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:
 - (1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349;
 - (2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C;
 - (3) The fictitious name of another foreign corporation authorized to transact business in this state;
 - (4) The name of an agency or instrumentality of the United States or this state or a subdivision of the United States or of this state;
 - (5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political party;
 - (6) The name “farmers’ market” unless the entity meets the definition of “farmers’ market” established in RSA 21:34-a.
- (f) A foreign limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph I(e), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:
 - (1) The entity with the name as described in subparagraph I(e) gives written consent to the applicant to use the name that is likely to be confused with or mistaken for its name; or
 - (2) The entity with the name as described in subparagraph I(e) gives written consent to the applicant to use the name that is not distinguishable from or is the same as its name and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, the name of the applicant; or
 - (3) The applicant delivers to the secretary of state a certified copy of the final judgment of a

court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(g) A foreign limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user foreign limited liability company:

- (1) Has merged with the other entity;
- (2) Has been formed by reorganization of the other entity; or
- (3) Has acquired all or substantially all of the assets, including the name, of the other entity.

II. This act does not control the use of fictitious names.

III. Nothing in this section shall prohibit the owner or owners of a trade name registered under RSA 349 to form a foreign limited liability company under the same name as the trade name.

IV. Each foreign limited liability company shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business in New Hampshire.
- (b) A registered agent, which agent may be:
 - (1) An individual who resides in this state and whose business office is identical with the registered office; or
 - (2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or
 - (3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or
 - (4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

V. A foreign limited liability company registered to transact business in this state may change its registered office or registered agent, or both by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) Its name;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of its new registered office;

- (d) The name and address of its current registered agent;
- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

VI. If a registered agent changes the street address of its business office, it may change the street address of the registered office of any foreign limited liability company for which it is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of paragraph V and recites that the foreign limited liability company has been notified of the change.

VII.(a) The registered agent of a foreign limited liability company registered to do business in this state may resign from such position by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The secretary of state shall mail a copy of the registered agent's statement of resignation to the foreign limited liability company at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed or on the appointment of a successor registered agent, whichever occurs first.

304-C:178 Amendments to Applications to Register Foreign Limited Liability Companies.

I. A foreign limited liability company registered to transact business in New Hampshire shall amend its application for registration if it changes:

- (a) Its name; or
- (b) Its state or country of formation.

II. The filing provisions of RSA 304-C:28 shall apply to the amendment of a foreign limited liability company's application for registration.

304-C:179 Cancellations of Registrations.

I. A foreign limited liability company registered to do business in this state may cancel its registration upon procuring from the secretary of state a certificate of cancellation. In order to procure such certificate, the foreign limited liability company shall deliver to the secretary of state an application for cancellation, which shall set forth:

- (a) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;
- (b) That the foreign limited liability company is not doing business in this state;
- (c) That the foreign limited liability company surrenders its certificate of registration to transact business in this state;
- (d) That the foreign limited liability company revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to do business in this state may thereafter be made on such foreign limited liability company by service of the action, suit, or proceeding upon the secretary of state;
- (e) An address to which a person may mail a copy of any process against the foreign limited liability company; and
- (f) A statement for withdrawal from the department of revenue administration under RSA 77-A:18, II.

II. The application for cancellation shall be in the form and manner designated by the secretary of state and shall be signed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

III. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

304-C:180 Doing Business Without Registration.

I. A foreign limited liability company doing business in New Hampshire may not maintain any action, suit or proceeding in New Hampshire until it has registered in New Hampshire and has paid all fees for the period during which it did business in New Hampshire while unregistered.

II. The failure of a foreign limited liability company to register in New Hampshire does not:

- (a) Impair the validity of any contract or act of the foreign limited liability company.
- (b) Impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract.
- (c) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of New Hampshire.

III. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in New Hampshire without registration.

IV. A foreign limited liability company which does business in this state without registration shall be liable to the state for the years or parts of the year during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by this act upon that foreign limited liability company had it duly registered, and all penalties imposed by this act. The attorney general may bring proceedings to recover all amounts due this state under the provisions of this section.

304-C:181 Service of Process on Registered Foreign Limited Liability Companies.

I. A foreign limited liability company's registered agent is the agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

II. If a foreign limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office. Service is perfected under this section at the earliest of:

(a) The date the foreign limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign limited liability company; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

III. This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

304-C:182 Service of Process on Unregistered Foreign Limited Liability Companies.

I. Any foreign limited liability company not registered under RSA 304-C:175, doing business in New Hampshire shall be deemed to have appointed and constituted the secretary of state of New Hampshire its agent for the acceptance of legal process in any action, suit, or proceeding, whether criminal or civil, against it in any state or federal court in New Hampshire arising or growing out of any business done by it within New Hampshire.

II. The doing of business in New Hampshire by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within New Hampshire.

III. Whenever the words "doing business," "the doing of business," or "business done in this state," by any such foreign limited liability company are used in this section, they shall mean

the course of practice of carrying on any business activities in New Hampshire, including, without limiting the generality of the foregoing, the solicitation of business or orders in New Hampshire.

IV. Service upon the secretary of state under paragraph I shall be made in accordance with the provisions of RSA 510:4, II.

304-C:183 Grounds for Revocation. The secretary of state may commence a proceeding under RSA 304-C:184 to revoke the registration of a foreign limited liability company authorized to transact business in this state if:

- I. The foreign limited liability company does not deliver its annual report to the secretary of state within 60 days after it is due;
- II. The foreign limited liability company does not pay within 60 days after they are due any franchise taxes or penalties imposed by this act or other law;
- III. The foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;
- IV. A member, manager, or agent of the foreign limited liability company signed a document he or she knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or
- V. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having the custody of limited liability company records in the state or country under whose law the foreign limited liability company is formed stating that it has been dissolved or disappeared as the result of a merger.

304-C:184 Procedures for and Effect of Revocation.

- I. If the secretary of state determines that one or more grounds exist under RSA 304-C:183 for revocation of a registration, the secretary shall send written notice of the secretary's determination under RSA 304-C:183 to the foreign limited liability company.
- II. If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after written notice is sent, the secretary of state may revoke the foreign limited liability company's registration by issuing a notice of revocation and mailing the notice of revocation to the foreign limited liability company at its principal office listed on the records of the New Hampshire secretary of state.
- III. The authority of a foreign limited liability to transact business in this state ceases on the date shown on the notice of revocation.
- IV. Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the limited liability company.

304-C:185 Appeals From Revocations.

- I. A foreign limited liability company may appeal the secretary of state's revocation of its registration to the superior court within 30 days after service of the notice of revocation is perfected.
- II. The foreign limited liability company appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its registration and the secretary of state's certificate of revocation. Venue shall lie in the superior court for the county in which the foreign limited liability company has a place of business or, if none, in the superior court for Merrimack county.
- III. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate, except that nothing in this section shall be construed to preclude a determination that a foreign limited liability company is carrying on business activity within this state within the meaning of RSA 77-A:1, XII.
- IV. The court's final decision may be appealed as in other civil proceedings.

Limited Liability Company Disputes

304-C:186 Venue and Method for Resolution of Limited Liability Company Internal Disputes. Unless the operating agreement provides otherwise, disputes between the members and disputes between the members and the managers relating to the limited liability company shall be resolved by litigation in the courts of the state of New Hampshire.

304-C:187 Actions by and Against Limited Liability Companies. An action may be brought by or against a limited liability company in its own name.

304-C:188 Right to Bring Actions on Behalf Of Limited Liability Companies.

- I. A member or members may bring an action in the superior court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed, provided that:
 - (a) All such plaintiff members are members at the time of bringing such action;
 - (b)(1) All such plaintiff members are members at the time of the transaction of which the plaintiffs complain; or
 - (2) The plaintiffs' status as members had devolved on the plaintiffs by operation of law or under the terms of a limited liability company agreement from persons who were members at the time of the transaction; and
 - (c) The complaint sets forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

II. Unless the operating agreement provide otherwise, an action on behalf of the limited liability company may be brought in the name of the limited liability company:

- (a) Whether or not a limited liability company agreement vests management of the limited liability company in one or more managers, by majority vote of the members; provided that the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or
- (b) If the limited liability company agreement vests management of the limited liability company in one or more managers, by one or more managers of the limited liability company upon a majority vote of the members; provided that in determining whether this member voting requirement is met, the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

III. If an action brought under paragraph I or II is successful, in whole or in part, as a result of a judgment, compromise, or settlement of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in the action or from the limited liability company.

304-C:189 Effects of Lack of Authority to Bring Actions. The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

304-C:190 Right of Members to Bring Direct Actions. Nothing in this subdivision shall be construed to restrict the right of a member or manager to bring a direct action on his or her own behalf against a member, a manager, or a limited liability company.

Limited Liability Company Fees

304-C:191 Fees.

I. No document required to be filed under this act shall be effective until the applicable fee required by this section is paid.

II. The following fees shall be paid to and collected by the secretary of state for deposit in the general fund of the state of New Hampshire:

- (a) Upon the receipt for filing of an application for reservation of name or a notice of transfer of reservation under RSA 304-C:27, a fee in the amount of \$15.
- (b) Upon the receipt for filing of a statement under RSA 304-C:36, II, a fee in the amount of \$15; upon the receipt for filing of a statement under RSA 304-C:36, V, a fee in the amount of \$15.
- (c) Upon the receipt for filing of a certificate of formation under RSA 304-C:31, a fee in the amount of \$50;

(d) Upon the receipt for filing of a certificate of amendment under RSA 304-C:34, a certificate of merger under RSA 304-C:158, a certificate of statutory conversion under RSA 304-C:149, or a restated certificate of formation under RSA 304-C:35, a fee in the amount of \$35;

(e) Upon the receipt for filing of a certificate of cancellation of a domestic limited liability company under RSA 304-C:142, a fee in the amount of \$35.

(f) Upon receipt for filing of an annual report under RSA 304-C:194, a fee in the amount of \$100; for failure or refusal to file an annual report or pay the filing fee on or before April 1 of any year, an additional late filing fee in the amount of \$50; upon receipt for filing of an application for reinstatement under RSA 304-C:138, I, a fee of \$135; and upon receipt for filing of an application for late reinstatement under RSA 304-C:145, I a fee of \$500.

(g) For certifying copies of any paper on file as provided for by this act, a fee in the amount of \$1 per page and \$5 for the certificate.

(h) Upon the receipt for filing of an application for registration as a foreign limited liability company under RSA 304-C:175, a fee in the amount of \$50; upon the receipt for filing of a certificate of cancellation under RSA 304-C:179, a fee in the amount of \$35; and upon receipt for filing of an amendment to an application under RSA 304-C:178, a fee in the amount of \$35.

(i) Upon the receipt for filing of a statement under RSA 304-C:177, V, a fee in the amount of \$15, and upon the receipt for filing of a statement under RSA 304-C:177, VI, a fee in the amount of \$15.

(j) For issuing any certificate of the secretary of state, including a certificate of good standing, other than a certification of a copy under subparagraph II(g), a fee in the amount of \$5, except that for issuing any certificate of the secretary of state that recites all of a limited liability company's filings with the secretary of state, a fee of \$10 shall be paid for each such certificate.

(k) For receiving, filing or indexing any certificate, affidavit, or agreement or any other paper provided for by this act, for which no different fee is specifically prescribed, a fee in the amount of \$15.

III. The secretary of state shall establish, and may from time to time amend, a schedule of specific fees payable under this section.

Miscellaneous Provisions

304-C:192 Inapplicability of Rule That Statutes in Derogation of the Common Law Are to be Strictly Construed. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

304-C:193 Resolution Of Cases Not Provided For In This Act. In any case not provided for in this act, the rules of law and equity shall govern.

304-C:194 Annual Reports to Secretary of State.

I. Each domestic limited liability company and each foreign limited liability company registered to do business in this state, except limited liability companies making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report that sets forth:

- (a) The name of the limited liability company and the state or country under whose law it is formed;
- (b) The address of its registered office and the name of its registered agent at that office in this state;
- (c) The address of its principal office;
- (d) The names and business addresses of its managers or, if there are no managers, at least one member; and
- (e) A brief description of the nature of its business.

II. Information in the annual report shall be current as of January 1 of the year the report is due.

III.(a) Except as provided in subparagraph (b), the first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic limited liability company was formed or a foreign limited liability company was registered to do business.

(b) A foreign limited liability company that has registered at any time between December 1 of the preceding year and April 1 of the current calendar year, or a domestic limited liability company that was formed during the same period, shall not be required to file an annual report during that year. Subsequent annual reports shall be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

IV.(a) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(b) If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of a notice under subparagraph (a), it is deemed to be timely filed.

304-C:195 Administrative Collections and Payments of Fees; Related Matters.

I. The secretary of state shall collect all fees required under this act and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expenses of administering this act out of any money in the treasury not otherwise appropriated until the fees collected under this act have been received

by the treasurer. Thereafter, the treasurer shall pay the expenses of administering this act out of the fees collected under this act and shall reimburse the treasury for previous expenses paid by him or her. The governor is authorized to draw a warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

304-C:196 Administrative Rulemaking. The secretary of state may adopt rules, under RSA 541-A, necessary to implement the provisions of this act.

304-C:197 Filing of Certificates, Etc. by Fax or Online. The secretary shall, with reasonable promptness, adopt and implement comprehensive regulations permitting fax and online filing of certificates of formation and other documents required to be filed under the act.

304-C:198 Severability Of Provisions. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

304-C:199 Singular and Plural. Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular.

304-C:200 Gender. The use of any gender shall be applicable to all genders.

304-C:201 Captions. The captions contained in this act are for purposes of convenience only and shall not control or affect the construction of the act.

304-C:202 Inapplicability of RSA 382-A:9-406 and RSA 382-A:9-408 to Interests in Limited Liability Companies. The provisions of RSA 382-A:9-406 and RSA 382-A:9-408 shall not apply to any interest in a limited liability company, including all rights, powers, and interests arising under a operating agreement or under this act. The provisions of this section shall prevail over the provisions of RSA 382-A:9-406 and RSA 382-A:9-408.

304-C:203 Equivalent Effects. Action validly taken under one provision of this act shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this act but fails to satisfy one or more requirements prescribed by such other provision.

304-C:204 Reserved Power of State of New Hampshire to Alter or Repeal Act. All provisions of this act may be altered from time to time or repealed, and all rights of members and managers are subject to this reservation.

3 Reference Changed. Amend RSA 77:3-a to read as follows:

77:3-a Limited Liability Company. For purposes of this chapter, “limited liability company” means a limited liability company formed under RSA 304-C or a foreign limited liability company as defined in RSA [304-C:1, IV] **304-C:9**.

4 Reference Changed. Amend RSA 77-A:1, XXIII-a to read as follows:

XXIII-a. "Limited liability company" means a limited liability company formed under RSA 304-C or a foreign limited liability company as defined in RSA [304-C:1, IV] **304-C:9**. In the case of a limited liability company required to make and file a United States partnership return of income, the provisions of this chapter shall be applied as though the limited liability company were a partnership and its members were partners.

5 References Changed. Amend RSA 77-A:18, I-II to read as follows:

I.(a) No corporation and no limited liability company organized under any law of this state may transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its members and managers pursuant to RSA [304-C:58] **304-C:141** until all taxes, interest, and penalties imposed upon the corporation or limited liability company under this chapter have been fully paid and a certificate of dissolution shall have been obtained from the commissioner of revenue administration that no returns, tax, interest, or penalties for taxes administered by the department are due and unpaid.

(b) A corporation or limited liability company wishing to transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its members or managers pursuant to RSA [304-C:58] **304-C:141** shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a nonrefundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the corporation's or limited liability company's records, the commissioner determines that no returns, tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a certificate in accordance with subparagraph (a).

II. A business organization wishing to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6) or RSA [304-C:68] **304-C:179**, shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a nonrefundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business organization's records, the commissioner determines that no returns, tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal for the purposes required under RSA 293-A:15.20(b)(6) or RSA [304-C:68] **304-C:179**.

6 Reference Changed. Amend RSA 293-A:11.09 to read as follows:

293-A:11.09 Approval of Conversion of a Corporation. A corporation may convert to a limited liability company organized under the laws of the state of New Hampshire upon the authorization of such conversion in accordance with this section and fulfillment of the requirements of RSA [304-C:17-a] **304-C:149**. The board of directors of the corporation shall adopt a plan of conversion and shall submit the plan of conversion for approval of the shareholders in the manner provided for shareholder approval of a plan of merger under RSA 293-A:11.03 for a merger requiring shareholder approval. After a plan of conversion is authorized and at any time before the certificate of conversion is filed, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in

accordance with the procedures set forth in the plan of conversion, or if none is set forth, in the manner determined by the board of directors. The term “corporation,” as used in this section, shall include nondepository trust companies incorporated as banking corporations under the provisions of RSA 392 or RSA 392-A. Such nondepository trust companies shall be entitled to employ the procedures provided in this section to voluntarily dissolve their trust company charters pursuant to RSA [392:43-47] **392:43 through 392:47** and to reorganize as domestic business corporations subject to the provisions of this statute.

7 Reference Changed. Amend RSA 304-D:6, III to read as follows:

III. Shall satisfy the requirements of RSA [304-C:3] **304-C:32**, except that a name shall not constitute a similar name if the similarity results from the use in the professional limited liability company’s name of personal names of its members or former members or of natural persons who were associated with a predecessor entity;

8 Reference Changed. Amend RSA 304-D:7, IV to read as follows:

IV. A member of a professional limited liability company becoming a disqualified person, unless such disqualification is for less than 5 months from the date of disqualification, shall cause cessation of membership for the purposes of RSA [304-C:27] **304-C:100**.

9 Reference Changed. Amend RSA 386-A:1-a to read as follows:

386-A:1-a Limited Liability Company. Notwithstanding RSA [304-C:7] **304-C:21**, I or any other provision of law to the contrary, a guaranty savings bank may be organized as a limited liability company. A bank organized as a limited liability company shall be subject to the provisions of state law applicable to such type of entity, provided, however, any filing required to be made with the secretary of state shall be made instead with the bank commissioner. Any reference to a corporation in the banking statutes shall also include a limited liability company. A bank organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a bank organized as a corporation. All managers and employees of a bank organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a bank organized as a corporation. Any reference to corporations, directors, officers, stockholders, or other like terms used to describe corporations in the banking statutes shall be construed to apply in the same manner to limited liability companies, managers, employees, members, or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational instruments of a bank either chartered or operating as a limited liability company shall satisfy the requirements of the Federal Deposit Insurance Corporation in order to be deemed “incorporated” for purposes of federal deposit insurance.

10 Reference Changed. Amend RSA 392:2-a to read as follows:

392:2-a Limited Liability Company. Notwithstanding RSA [304-C:7] **304-C:21**, I or any other provision of law to the contrary, a trust company subject to the regulation of the bank commissioner may be organized as a limited liability company with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a corporate trust

company. A trust company organized as a limited liability company shall have all the powers and privileges and, except as otherwise provided in this section, be subject to all the duties, restrictions, and liabilities of state laws applicable to a limited liability company. Any reference to a corporation in the statutes governing trust companies shall also include a limited liability company. A trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a trust company organized as a corporation. All managers and employees of a trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a trust company organized as a corporation. Any reference to corporations, directors, officers, stockholders, or other like terms used to describe corporations in the statutes governing trust companies shall be construed to apply in the same manner to limited liability companies, managers, employees, members, or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational instrument of a trust company chartered as a limited liability company shall provide that its existence shall be perpetual, that the company shall be managed by managers, that no member of the company shall be individually liable for the debts of the company, other than to the extent of the member's investment therein, and that any limitation on transferability of ownership interests shall exclude any transfer required by lawful order of the bank commissioner.

11 Reference Changed. Amend RSA 392-B:3 to read as follows:

392-B:3 Limited Liability Company. Notwithstanding RSA [304-C:7] **304-C:21**, I, or any other provision of law to the contrary, a family trust company subject to the regulation of the bank commissioner may be organized as a limited liability company with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a corporate family trust company. A family trust company organized as a limited liability company shall have all the powers and privileges and, except as otherwise provided in this section, be subject to all the duties, restrictions, and liabilities of state laws applicable to a limited liability company. A family trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a family trust company organized as a corporation. All managers and employees of a family trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a family trust company organized as a corporation. Any reference to corporations, directors, officers, stockholders, or other like terms used to describe corporations in the statutes governing family trust company shall be construed to apply in the same manner to limited liability companies, managers, employees, members, or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational instrument of a family trust company chartered as a limited liability company shall provide that its existence shall be perpetual, that the company shall be managed by managers, that no member of the company shall be individually liable for the debts of the company, other than to the extent of the member's investment therein, and that any limitation on transferability of ownership interests shall exclude any transfer required by lawful order of the bank commissioner.

12 Effective Date. This act shall take effect January 1, 2013.

LBAO

12-2851

Revised 03/16/12

SB 203 FISCAL NOTE

AN ACT relative to limited liability companies.

FISCAL IMPACT:

The Department of Revenue Administration states this bill may have an indeterminable impact on state revenues in FY 2013 and each year thereafter. There will be no impact on state expenditures, or county and local revenues or expenditures.

METHODOLOGY:

The Department of Revenue Administration states proposed RSA 304-C:149 and RSA 304-C:153 in this bill make statutory conversions nontaxable under the real estate transfer tax. The Department states it is unable to estimate the total impact of the changes as it cannot estimate the number of such statutory conversions.

The Department of State and the Banking Department state this bill will have no fiscal impact.